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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

KACEY MATTHEWS, an individual, on
behalf of herself and on behalf of all
persons similarly situated,

Plaintiff,

vs.

DEJON ENTERPRISES, INC., a
California Corporation; and DOES 1
through 50, inclusive,

Defendants.

CASE NO.: **30-2021-01236088-CU-OE-CXC**

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

Hearing Date: December 15, 2023

Hearing Time: 9:00 a.m.

Reservation No. 74146786

Judge: Hon. William D. Claster

Dept.: CX101

Action Filed: December 14, 2021

Trial Date: Not set

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1 **I. INTRODUCTION**

2 Plaintiff Kacey Matthews (“Plaintiff”) respectfully submits this memorandum in support of the
3 unopposed motion for preliminary approval of the proposed class action settlement with Defendant
4 Dejon Enterprises, Inc. (“Defendant”), and seeks entry of an order: (1) preliminarily approving the
5 proposed settlement of this class action with Defendant; (2) for settlement purposes only, conditionally
6 certifying the Class, which is comprised of “all individuals who are or previously were employed by
7 Defendant Dejon Enterprises, Inc. in California who were classified as hourly, non-exempt employees
8 at any time during the Class Period” which is December 14, 2017 to December 11, 2022; (3)
9 provisionally appointing Plaintiff as the representative of the Class; (4) provisionally appointing Norman
10 B. Blumenthal, Kyle R. Nordrehaug, and Aparajit Bhowmik of Blumenthal Nordrehaug Bhowmik De
11 Blouw LLP as Class Counsel; (5) approving the form and method for providing class-wide notice;
12 (6) directing that notice of the proposed settlement be given to the class; (7) appointing ILYM Group
13 as Administrator, and (8) scheduling a final approval hearing date to consider Plaintiff’s motion for final
14 approval of the settlement and for approval of attorneys' fees and expenses. Plaintiff and Defendant
15 (collectively the “Parties”) have reached a full and final settlement of the above-captioned action, which
16 is embodied in the Class Action and PAGA Settlement Agreement (“Agreement”) filed concurrently with
17 the Court.¹ A copy of the fully executed Agreement is attached as Exhibit #1 to the Declaration of Kyle
18 Nordrehaug (“Decl. Nordrehaug”), served and filed herewith. The form of the Agreement is based upon
19 the Los Angeles County Superior Court model form for a class and PAGA settlement.

20 As consideration for this Settlement, the Gross Settlement Amount is Six Hundred Thousand
21 Dollars (\$600,000) (the “Gross Settlement Amount”) to be paid by Defendant, as set forth in the
22 Agreement. The Gross Settlement Amount will settle all issues pending in the Action between the
23 Parties and will be made in full and final settlement of the Released Class Claims in exchange for the
24 payments to Participating Class Members from the Net Settlement Amount, and includes (a) the costs
25 of administration of the settlement, (b) all attorneys’ fees and costs, (c) Class Representative Service
26 Payment, and (d) the PAGA Penalties payment allocated 75% to the LWDA and 25% to the Aggrieved

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

1 Employees. (Agreement at ¶ 1.22.) The Gross Settlement Amount does not include the employer's
2 share of payroll taxes which will be separately paid by Defendant. (Id.) The Settlement is all-in with no
3 reversion to Defendant and no need to submit a claim form. (Id.) Decl. Nordrehaug at ¶3.

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

5 **\$600,000** (Gross Settlement Amount)

- 6 - \$10,000 (Plaintiff's proposed service award not to exceed \$10,000)
- 7 - \$15,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- 8 - \$200,000 (Class Counsel Fees Payment - not to exceed 1/3 of settlement)
- 9 - \$15,000 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
- 10 - \$17,000 (Administration Expenses Payment - not to exceed amount)

11 **\$343,000** (Net Settlement Amount)

12 Based upon 516 Class Members who collectively worked 18,518 Workweeks (Agreement at ¶4.1), the
13 Gross Settlement Amount provides an average value of \$1,162 per Class Member and \$32 per
14 Workweek and after deductions the Net Settlement Amount provides an average recovery of \$664.72
15 per Class Member and a recovery of \$18.52 per Workweek. Decl. Nordrehaug at ¶6.

16 On October 11, 2022, the Parties participated in an all-day mediation session presided over by
17 Louis Marlin, a respected and experienced mediator of wage and hour class actions. Following the
18 mediation, the Parties continued to negotiate through the mediator, and eventually agreed on the basic
19 terms of a settlement pursuant to a mediator's proposal which was memorialized in the form of a
20 Memorandum of Understanding. Decl. Nordrehaug at ¶5. The Settlement is fair, reasonable and
21 adequate, and should be preliminarily approved because there is a substantial monetary payment, and
22 there are significant litigation and class-certification risks. Therefore, Plaintiff respectfully requests that
23 this Court grant preliminary approval of the Agreement and enter the proposed order submitted
24 herewith.

25 **II. DESCRIPTION OF THE SETTLEMENT**

26 The Gross Settlement Amount is Six Hundred Thousand Dollars (\$600,000). (Agreement at ¶
27 1.22.) Under the Settlement, the Gross Settlement Amount consists of the following elements: (1)
28 payment of the Individual Class Payments to the Participating Class Members; (2) Class Counsel Fees
Payment and Class Counsel Litigation Expenses Payment; (3) Administration Expenses Payment; (4) the
Class Representative Service Payment to the Plaintiff; and (5) the PAGA Penalties payment. (Agreement
at ¶ 1.22.) The Gross Settlement Amount does not include Defendant's share of payroll taxes.

1 (Agreement at ¶ 3.1.) The Gross Settlement Amount shall be all-in with no reversion to Defendant.

2 (Agreement at ¶ 3.1.) Decl. Nordrehaug at ¶15.

3 Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary
4 to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator 30 days
5 after the Effective Date but not earlier than December 31, 2023. (Agreement at ¶ 4.3.) The distribution
6 of Individual Class Payments to Participating Class Members along with the other Court-approved
7 distributions shall be made by the Administrator within fourteen (14) days after Defendant funds the
8 Gross Settlement Amount. (Agreement at ¶ 5.1.) Decl. Nordrehaug at ¶16.

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

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

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

1 days after it is mailed. (Agreement at ¶ 5.2.) Any settlement checks not cashed within 180 days will be
2 voided and any funds represented by such checks to the California Controller's Unclaimed Property Fund
3 in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of
4 C.C.P. § 384(b). (Agreement at ¶ 5.4.) Decl. Nordrehaug at ¶19.

5 Subject to Court approval, the Parties have agreed on ILYM Group to administer the settlement
6 in this action ("Administrator"). (Agreement at ¶ 1.2.) The Administrator will be paid for settlement
7 administration in an amount not to exceed \$17,000. (Agreement at ¶ 3.2(c).) Decl. Nordrehaug at ¶20.

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

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

23 **III. CASE BACKGROUND**

24 The description of the case and claims, along with the procedural history is set forth in the
25 Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and the
26 exchange of documents and information in connection with the Action over one year which permitted
27 Class Counsel to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and 14. The
28 Parties participated in mediation on October 11, 2022 with Louis Marlin, which after arms' length

1 negotiations, resulted in this Settlement. Decl. Nordrehaug, ¶12.

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

4 California "[p]ublic policy generally favors the compromise of complex class action litigation."
5 *Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 581 (2010) quoting *Cellphone Termination Fee*
6 *Cases*, 180 Cal.App.4th 1110, 1117-18 (2009). Class action settlements are approved where the
7 proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
8 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982), cert.
9 denied, 459 U.S. 1217 (1983)).

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

16 The primary question presented on an application for preliminary approval of a proposed class
17 action settlement is whether the proposed settlement is "within the range of possible approval." *Manual*
18 *for Complex Litigation, Second* §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir.
19 1982).² Preliminary approval is merely the prerequisite to giving notice so that "the proposed
20 settlement... may be submitted to members of the prospective Class for their acceptance or rejection."
21 *Sayaman v. Baxter Healthcare Corp.*, 2010 U.S. Dist. LEXIS 151997, *3 (C.D. Cal. 2010). There is
22 "a presumption of fairness . . . where . . . [a] settlement is reached through arms-length bargaining."
23 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 245 (2001) (citation omitted); see also *Cho v.*
24 *Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th 734, 742-45 (2009) (upholding trial court's

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).

determination that settlement was "fair, reasonable and adequate" where the settlement "provided valuable benefits to the class ... that were 'particularly valuable in light of the risks plaintiff would have faced if she proceeded to litigate her case.'"); *Newberg*, 3d Ed., §11.41, p.11-88. However, the ultimate question of whether the proposed settlement is fair, reasonable and adequate is made after notice of the settlement is given to the class members and a final settlement hearing is held by the Court.

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

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

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

B. Factors To Be Considered In Granting Preliminary Approval

A number of factors are to be considered in evaluating a settlement for purposes of preliminary approval. In determining whether to grant preliminary approval, the court considers whether the "(1) the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, (2) has no obvious deficiencies, (3) does not improperly grant preferential treatment to class representatives or segments of the class, and (4) falls within the range of possible approval." *In re Tableware Antitrust Litig.*, 484 F.Supp. 2d 1078, 1079 (N.D. Cal. 2007). Courts hold that "a presumption of fairness exists

1 where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are
2 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
3 litigation; and (4) the percentage of objectors is small.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.
4 App. 4th 116, 128 (2008). Here, the Settlement meets all of these criteria for preliminary approval and
5 therefore the presumption applies.

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

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

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

21 ³ The release applicable to the Class is appropriately tethered to allegations in the Action and the
22 “Released Class Claims” are narrowly defined as “any and all claims, demands, rights, liabilities,
23 grievances, and causes of action that were pled or could have been pled based on the factual allegations
24 contained in the Operative Complaint which occurred during the Class Period which includes claims for
25 (1) failure to pay minimum wages; (2) failure to pay overtime compensation; (3) failure to provide meal
26 periods; (4) failure to authorize and permit rest breaks; (5) failure to indemnify necessary business
27 expenses; (6) failure to timely pay final wages at termination; (7) failure to provide accurate itemized
28 wage statements; and (8) unfair business practices under the California Business and Professions Code.
Except as expressly set forth in this Agreement, Participating Class Members (other than Plaintiff) do
not release any other claims, including claims for vested benefits, wrongful termination, unemployment
insurance, disability, social security, workers' compensation, and claims outside of the Class Period.”
(Agreement at ¶¶ 1.39 and 6.2.)

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

10 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant is
11 Six Hundred Thousand Dollars (\$600,000). The Settlement is all-in with no reversion to Defendant and
12 no need to submit a claim form. Decl. Nordrehaug at ¶ 3.

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

25 Plaintiff and Class Counsel recognize the expense and length of continuing to litigate and trying
26 this Action against Defendant through possible appeals which could take several years. Class Counsel
27 has also taken into account the uncertain outcome and risk of litigation, especially in complex class
28 actions such as this Action. Class Counsel is also mindful of and recognize the inherent problems of

1 proof under, and alleged defenses to, the claims asserted in the Action. Based upon their evaluation,
2 Plaintiff and Class Counsel have determined that the Settlement set forth in the Agreement is in the best
3 interest of the Class Members. Decl. Nordrehaug, ¶ 23.

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

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

11 The proposed Settlement herein has no "obvious deficiencies" and is well within the range of
12 possible approval. All Class Members will receive an opportunity to participate in the Settlement and
13 receive payment according to the same formula. (Agreement at ¶ 3.2(e).) Based upon 516 Class
14 Members who collectively worked 18,518 Workweeks (Agreement at ¶ 4.1), the Gross Settlement
15 Amount provides an average value of \$1,162 per Class Member and \$32 per Workweek and after
16 deductions the Net Settlement Amount provides an average recovery of \$664.72 per Class Member and
17 a recovery of \$18.52 per Workweek. Decl. Nordrehaug, ¶6.

18 The calculations to compensate for the amount due for the Class at the time of the mediation
19 were calculated by Berger Consulting, Plaintiff’s damage expert. As to the Class whose claims are at
20 issue in this Action, Plaintiff used the expert to analyze the data and determine the potential unpaid
21 wages for the employees. The maximum potential damages were calculated to be \$163,056 for the
22 alleged unpaid minimum and overtime wages due to off the clock work of donning and doffing based
23 upon 10 minutes per shift, \$174,530 for alleged meal period damages based upon a 18% potential
24 violation rate for shifts worked, \$251,335 for alleged rest period damages based time records showing
25 potential violations in 18,087 shifts, and \$22,572 for alleged unreimbursed business expenses for
26 personal cell phone usage at \$5 per month. Decl. Nordrehaug, ¶6. As a result, the total damage
27 valuation was calculated that Defendant was subject to a maximum damage claim in the amount of
28 \$611,492. As to potential penalties, Plaintiff calculated that potential waiting time penalties were a

1 maximum of \$741,679 and potential wage statement penalties were \$415,050. Defendant vigorously
2 disputed Plaintiff's calculations and exposure theories. Decl. Nordrehaug, ¶6.

3 Consequently, the Gross Settlement Amount of \$600,000 is equivalent to the maximum damages
4 in this Action, and represents more than 33% of the maximum value of the combination of alleged
5 damages and penalties at issue in this case at the time this Settlement was negotiated.⁴ The above
6 maximum calculations should then be adjusted in consideration for both the risk of class certification and
7 the risk of establishing class-wide liability on all claims. Given the amount of the settlement as compared
8 to the potential value of claims in this case and the defenses asserted by Defendant, this settlement is fair
9 and reasonable.⁵ Clearly, the goal of this litigation has been met. Decl. Nordrehaug, ¶6.

10 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
11 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
12 Defendant present serious threats to the claims of the Plaintiff and the other Class Members. Defendant
13 asserted that Defendant's practices complied with all applicable Labor laws. Defendant argued that
14 Class Members were paid for all time worked and that all work time was properly recorded. Defendant
15 contended that its meal and rest period policies fully complied with California law and Defendant did not
16 fail to provide the opportunity for legally required meal and rest breaks. Defendant contended that there
17 was no failure to pay for business expenses and any cell phone usage was merely convenient and
18 voluntary such that reimbursement was not legally required. Finally, Defendant could argue that the

19
20 ⁴ 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
22 claim is addressed in the Decl. Nordrehaug at ¶33.

23 ⁵ See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a
24 settlement where the settlement amount constituted approximately 25% of the estimated overtime
25 damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12
26 (N.D. Cal. 2015) (granting final approval where "the proposed Total Settlement Amount represents
27 approximately 10% of what class might have been awarded had they succeeded at trial."); *Dunleavy v.*
28 *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.*
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.
Cal. 2014) (approving wage and hour class action settlement worth "somewhere between 9% and 18%"
of maximum valuation).

1 Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), weakened Plaintiff's
2 claims, on liability, value, and class certifiability as to the meal and rest period claims. Defendant also
3 argues that based on its facially lawful practices, Defendant acted in good faith and without willfulness,
4 which if accepted would negate the claims for waiting time penalties and/or inaccurate wage statements.
5 If successful, Defendant's defenses could eliminate or substantially reduce any recovery to the Class.
6 While Plaintiff believes that these defenses could be overcome, Defendant maintains these defenses have
7 merit and therefore present a serious risk to recovery by the Class. Decl. Nordrehaug, ¶ 24.

8 There was also a significant risk that, if the Action was not settled, Plaintiff would be unable to
9 obtain a certified class and maintain the certified class through trial, and thereby not recover on behalf
10 of any other employees. At the time of the mediation, Defendant forcefully opposed the propriety of
11 class certification, arguing that individual issues precluded class certification. Further, as demonstrated
12 by the California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014),
13 there are significant hurdles to overcome for a class-wide recovery even where the class has been
14 certified. While other cases have approved class certification in wage and hour claims, class certification
15 in this action was hotly disputed and the maintenance of a certified class through trial was by no means
16 a foregone conclusion. Decl. Nordrehaug, ¶ 25.

17 After arm's length negotiations between experienced and informed counsel, the Parties
18 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of
19 \$600,000. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

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

26 2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
27 (9th Cir. 2000)).

28 **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

1 Members are all determined under a neutral methodology. Each Participating Class Member will receive
2 the same opportunity to participate in and receive payment through a neutral formula that is based upon
3 the Workweeks for that individual. Decl. Nordrehaug, ¶4.

4 Plaintiff will apply to the Court for a Class Representative Service Payment in consideration for
5 her service and for the risks undertaken on behalf of the Class. (Agreement at ¶ 3.2(a).) Plaintiff
6 performed her duties admirably by working with Class Counsel for over one year. The Declaration of
7 the Plaintiff is submitted herewith in support. Decl. Nordrehaug at ¶27. At this stage, the requested
8 service award of \$10,000 is well within the accepted range of awards for purposes of preliminary
9 approval. *See e.g. Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018)
10 (awarding \$12,500 where average class member payment was \$351); *Holman v. Experian Info.*
11 *Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014) (approving \$10,000 service award
12 where class member recovery was \$375); *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008 WL
13 4473183, *7 (S.D.Cal. Oct. 06, 2008) (awarding \$25,000 service award to each of six plaintiffs in
14 overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D.Cal. Jan. 27 2007)
15 (awarding \$25,000 service award in overtime class action and a pool of \$100,000 in enhancements).
16 As explained in *Glass*, service awards are routinely awarded to class representatives to compensate the
17 employees for the time and effort expended on the case, for the risk of litigation, for the fear of suing
18 an employer and retaliation there from, and to serve as an incentive to vindicate the statutory rights of
19 all employees. 2007 WL 221862 at *16-17.

20 **4. The Stage Of The Proceedings Are Sufficiently Advanced To Permit** 21 **Preliminary Approval Of The Settlement**

22 The stage of the proceedings at which this Settlement was reached also militates in favor of
23 preliminary approval and ultimately, final approval of the Settlement. Class Counsel has conducted a
24 thorough investigation into the facts of the class action. Class Counsel began investigating the Class
25 Members' claims before the Action were filed, and during the course of litigation, Class Counsel
26 performed forma and informal discovery which included the production of hundreds of pages of
27 documents. Class Counsel conducted a review and analysis of the relevant documents and data. Class
28 Counsel was also experienced with the claims at issue here, as Class Counsel previously litigated and

1 settled similar claims in other actions. Accordingly, the agreement to settle did not occur until Class
2 Counsel possessed sufficient information to make an informed judgment regarding the likelihood of
3 success on the merits and the results that could be obtained through further litigation. Decl. Nordrehaug
4 at ¶28.

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

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

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

17 All individuals who are or previously were employed by Defendant Dejon Enterprises,
18 Inc. in California who were classified as hourly, non-exempt employees at any time
during the Class Period.

19 (Agreement at ¶ 1.5.)

20 The Class Period is December 14, 2017 to December 11, 2022. (Agreement at ¶ 1.13.)

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

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

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

1 representatives who can adequately represent the class.

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

3 While Defendant reserves all rights to dispute that the Plaintiff can satisfy these requirements,
4 the Parties agree that Defendant will not dispute that these requirements may be satisfied in this case for
5 purposes of settlement only and therefore, the proposed Class should be certified for purposes of
6 settlement only. (Agreement at ¶ 2.9.)

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

8 Plaintiff brings this action on behalf of a Class of hourly, non-exempt employees of Defendant
9 during the Class Period. Plaintiff asserts that all of these individuals are ascertainable because the class
10 members can readily be determined through examination of Defendant's files. Given that the Class
11 consists of approximately 516 members, Plaintiff maintains that numerosity is clearly satisfied. *See*
12 *Bowles v. Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose*
13 *v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity
14 requirement.) Here, Plaintiff asserts that the 516 current and former employees that comprise the Class
15 can be identified based on Defendant's records and are sufficiently numerous for class certification.
16 Decl. Nordrehaug at ¶30.

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

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

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

1 Here, Plaintiff contends that common questions of law and fact are present, specifically the
2 common questions of whether Defendant's employment practices were lawful, whether Defendant failed
3 to provide meal and rest periods to Class Members, whether Class members were lawfully compensated
4 for all hours worked, whether Defendant failed to provide required expense reimbursement, and whether
5 Class Members are entitled to damages and penalties as a result of these practices. Plaintiff contends
6 that certification of this Class is appropriate because Defendant allegedly engaged in uniform practices
7 with respect to the Class Members. As a result, these common questions of liability could be answered
8 on a class wide basis. Decl. Nordrehaug, ¶30. Defendant disputes that common questions predominate
9 but will not oppose such a finding for purposes of this Settlement only.

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

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

17 In the instant case, Plaintiff contends that the typicality requirement is fully satisfied. Plaintiff,
18 like every other member of the Class, was employed by Defendant as a non-exempt employee, and, like
19 every other member of the Class, was subject to the same employment practices. Plaintiff, like every
20 other member of the Class, also claim owed compensation as a result of the Defendant's uniform
21 company policies and practices. Thus, the claims of Plaintiff and the members of the Class arise from
22 the same course of conduct by Defendant, involve the same issues, and are based on the same legal
23 theories. Decl. Nordrehaug at ¶30. For purposes of settlement, Plaintiff asserts that the typicality
24 requirement is met as to the common issues presented in this case. Defendant does not oppose a finding
25 of typicality for purposes of this Settlement only.

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

27 Plaintiff contends that the Class Members are adequately represented here because Plaintiff and
28 representing counsel (a) do not have any conflicts of interest with other class members, and (b) will

1 prosecute the case vigorously on behalf of the class. *Hanlon*, 150 F.3d at 1020. This requirement is met
2 here. First, Plaintiff is well aware of her duties as the representative of the Class and has actively
3 participated in the prosecution of this case to date. Plaintiff effectively communicated with Class
4 Counsel, provided documents and information to Class Counsel, and participated in the investigation and
5 resolution of the Action. The personal involvement of the Plaintiff was essential to the prosecution of
6 the Action and the monetary settlement reached. Second, Plaintiff retained competent counsel who are
7 experienced in employment class actions and who have no conflicts. Decl. Nordrehaug at ¶ 31. Third,
8 there is no antagonism between the interests of the Plaintiff and those of the Class. Both the Plaintiff
9 and the Class Members seek monetary relief under the same set of facts and legal theories. Under such
10 circumstances, there can be no conflicts of interest, and adequacy of representation is satisfied. *Reaves*
11 *v. Ketoro, Inc.*, 2020 U.S. Dist. Lexis 167926, *23 (C.D. Cal. 2020). Defendant disputes that the
12 adequacy requirement is satisfied but will not oppose such a finding for purposes of this Settlement only.

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

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

19 Absent class treatment, each individual plaintiff would present in separate, duplicative
20 proceedings the same or essentially the same arguments and evidence, including expert
21 testimony. The result would be a multiplicity of trials conducted at enormous expense
22 to both the judicial system and the litigants.

23 *Sav-On*, 34 Cal. 4th at 340.

24 Here, Plaintiff contends that a class action is the superior mechanism for resolution of the claims
25 as pled by the Plaintiff. While Defendant disputes that class treatment is superior, Defendant does not
26 dispute a finding of superiority in this action for purposes of this Settlement only.

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

28 The Court has broad discretion in approving a practical notice program. The Parties have agreed
upon procedures by which the Class Members will be provided with written notice of the Settlement

1 similar to that approved and utilized in hundreds of class action settlements. In accordance with the
2 Agreement, Defendant will provide to the Administrator a confidential electronic spreadsheet containing
3 the Class Data. (Agreement at ¶ 4.2.) Within 14 days after receiving the Class Data, the Administrator
4 will mail the Class Notice Packet to all Class Members via first-class U.S. Mail using the most current
5 mailing address information available. (Agreement at ¶ 8.4(b).) A Spanish translation of the Class Notice
6 Packet will be included in the mailing. (Agreement at ¶ 1.11.)

7 The Class Notice, drafted jointly and agreed upon by the Parties through their respective counsel
8 and to be approved by the Court, includes all relevant information. (See Exhibit “A” to the Agreement.)
9 The Class Notice will include, among other information: (i) information regarding the Action; (ii) the
10 impact on the rights of the Class Members if they do not opt out, including a description of the
11 applicable release; (iii) information to the Class Members regarding how to opt out and how to object
12 to the Settlement; (iv) the estimated Individual Class Payment for each of the Class Members; (iii) the
13 amount of attorneys’ fees and expenses to be sought; (v) the amount of the Plaintiff’s service award
14 request; and (vi) the anticipated expenses of the Administrator. The Class Notice Packet will also
15 include an Exclusion form and a Dispute form. (Agreement at ¶ 1.12.) Decl. Nordrehaug at ¶32.

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

26 **VII. CONCLUSION**

27 Plaintiff respectfully requests that the Court preliminarily approve the proposed settlement and
28 sign the proposed Preliminary Approval Order, and schedule the final approval hearing for the proposed

1 date of May 24, 2024, which is a date that is at least one hundred twenty (120) days from the date of
2 Preliminary Approval.

3 Dated: November 13, 2023

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

By: /s/ Kyle Nordrehaug
Kyle R. Nordrehaug, Esq.
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