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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO**

EDWARD VIRGEN III, HOLLY ALSOP, and
CHRISTOPHER SHEA O'DONNELL, on
behalf of the State of California, as private
attorney generals, and as individuals, on behalf
of themselves and on behalf of all persons
similarly situated,

Plaintiffs,

vs.

CURALEAF CA, INC., a California
Corporation; CURA CA LLC, a California
Limited Liability Company; CURA CS INC., a
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO.: **34-2022-00314655-CU-OE-GDS**

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

Hearing Date: April 26, 2024
Hearing Time: 9:00 a.m.
Reservation # **A-314655-001**

Judge: Hon. Lauri A. Damrell
Dept: 22

Date Filed: January 31, 2022
Trial Date: Not set

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1 **I. INTRODUCTION**

2 Plaintiffs Holly Alsop, Christopher Shea O'Donnell, and Edward Virgen III (“Plaintiffs”)
3 respectfully submit this memorandum in support of the unopposed motion for preliminary approval of
4 the proposed class action settlement with Defendants Curaleaf CA, Inc., Cura CA LLC, and Cura CS
5 Inc. (“Defendants”), and seek entry of an order: (1) preliminarily approving the proposed settlement
6 of this class action with Defendants; (2) for settlement purposes only, conditionally certifying the Class,
7 which is comprised of “all individuals who are or previously were employed by Defendants Curaleaf
8 CA, Inc., Cura CA LLC, and Cura CS Inc. in the State of California on a non-exempt basis at any time
9 during the Class Period”, which is January 27, 2018 through November 16, 2023; (3) provisionally
10 appointing Plaintiffs as the representatives of the Class; (4) provisionally appointing Norman B.
11 Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik, Nicholas J. De Blouw and Christine T. LeVu of
12 Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel; (5) approving the form and
13 method for providing class-wide notice; (6) directing that notice of the proposed settlement be given
14 to the class; (7) appointing ILYM Group as Administrator, and (8) scheduling a final approval hearing
15 date, proposed for September 13, 2024 which is at least 120 days from preliminary approval, to
16 consider Plaintiffs’ motion for final approval of the settlement and for approval of attorneys’ fees and
17 expenses. Plaintiffs and Defendants (collectively the “Parties”) have reached a full and final settlement
18 of the above-captioned action, which is embodied in the Class Action and PAGA Settlement Agreement
19 (“Agreement”) filed concurrently with the Court.¹ A copy of the fully executed Agreement is attached
20 as Exhibit #1 to the Declaration of Kyle Nordrehaug (“Decl. Nordrehaug”), served and filed herewith.
21 The form of the Agreement is based upon the Los Angeles County Superior Court model form for a
22 class and PAGA settlement.

23 As consideration for this Settlement, the non-reversionary Gross Settlement Amount of Five
24 Hundred Fifty-One Thousand Four Hundred Fifty-Nine Dollars (\$551,459) (the “Gross Settlement
25 Amount”) is to be paid by Defendants, as set forth in the Agreement. The Gross Settlement Amount
26 will settle all issues pending in the Action between the Parties and will be made in full and final
27

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

1 settlement of the Released Class Claims in exchange for the payments to Participating Class Members
2 from the Net Settlement Amount, and includes (a) the costs of administration of the settlement, (b) all
3 attorneys' fees and costs, (c) Class Representative Service Payments, and (d) the PAGA Penalties
4 payment allocated 75% to the LWDA and 25% to the Aggrieved Employees. (Agreement at ¶ 1.22.)
5 Decl. Nordrehaug at ¶3.

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

8 **\$551,459** (Gross Settlement Amount)

- 9 - \$37,500 (Plaintiffs' proposed service award not to exceed \$12,500 each)
- \$25,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- 10 - \$183,819 (Class Counsel Fees Payment - not to exceed 1/3 of settlement)
- \$10,000 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
- 11 - \$10,000 (Administration Expenses Payment - not to exceed amount)

11 **\$285,140** (Net Settlement Amount)

12 Based upon 291 Class Members who collectively worked 17,488 Workweeks (Agreement at ¶ 4.1), the
13 Gross Settlement Amount provides an average value of \$1,895 per Class Member and \$31 per
14 Workweek and after deductions the Net Settlement Amount provides an average recovery of \$1,014.73
15 per Class Member and a recovery of \$16.30 per Workweek. Decl. Nordrehaug at ¶6.

16 On August 16, 2023, the Parties participated in an all-day mediation session presided over by
17 Tripper Ortman, a respected and experienced mediator of wage and hour class actions. Following the
18 mediation, the Parties agreed on the basic terms of a settlement pursuant to a mediator's proposal which
19 was memorialized in the form of a Memorandum of Understanding. Decl. Nordrehaug at ¶5. The
20 Settlement is fair, reasonable and adequate, and should be preliminarily approved because there is a
21 substantial monetary payment, and there are significant litigation and class-certification risks.
22 Therefore, Plaintiffs respectfully request that this Court grant preliminary approval of the Agreement
23 and enter the proposed order submitted herewith.

24 **II. DESCRIPTION OF THE SETTLEMENT**

25 The Gross Settlement Amount is Five Hundred Fifty-One Thousand Four Hundred Fifty-Nine
26 Dollars (\$551,459). (Agreement at ¶ 1.22.) Under the Settlement, the Gross Settlement Amount
27 consists of the following elements: (1) payment of the Individual Class Payments to the Participating
28 Class Members; (2) Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (3)

1 Administration Expenses Payment; (4) the Class Representative Service Payments to the Plaintiffs; and
2 (5) the PAGA Penalties payment. (Agreement at ¶ 1.22.) The Gross Settlement Amount does not
3 include Defendants' share of payroll taxes. (Agreement at ¶ 3.1.) The Gross Settlement Amount shall
4 be all-in with no reversion to Defendants. (Agreement at ¶ 3.1.) Decl. Nordrehaug at ¶15.

5 Within thirty (30) days of the Effective Date, Defendants shall deposit the Gross Settlement
6 Amount with the Administrator. (Agreement at ¶ 4.3.) The distribution of Individual Class Payments
7 to Participating Class Members along with the other Court-approved distributions shall be made by the
8 Administrator within fourteen (14) days after Defendants fund the Gross Settlement Amount.
9 (Agreement at ¶ 5.1.) Decl. Nordrehaug at ¶16.

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

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

1 Ex. A.) Decl. Nordrehaug at ¶18.

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

7 Subject to Court approval, the Parties have agreed on ILYM Group to administer the settlement
8 in this action ("Administrator"). (Agreement at ¶ 1.2.) The Administrator will be paid for settlement
9 administration in an amount not to exceed \$10,000. (Agreement at ¶ 3.2(c).) ILYM provided a capped
10 estimate of \$8,500 for administration expenses. Decl. Nordrehaug at ¶20.

11 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
12 to exceed one-third of the Gross Settlement Amount, as the Class Counsel Fees Payment. (Agreement
13 at ¶ 3.2(b).) Class Counsel will also be allowed to apply separately for an award of Class Counsel
14 Litigation Expenses Payment in an amount not to exceed \$25,000. (Agreement at ¶ 3.2(b).) Subject
15 to Court approval, the Agreement provides for a payment of no more than \$12,500 each to the Plaintiffs
16 as the Class Representative Service Payments. (Agreement at ¶ 3.2(a).) Decl. Nordrehaug at ¶21.

17 Subject to Court approval, the PAGA Penalties will be paid from the Gross Settlement Amount
18 for PAGA penalties under the California Private Attorneys General Act, Cal. Labor Code Section 2698,
19 *et seq.* ("PAGA"). The PAGA Penalties are \$10,000. (Agreement at ¶¶ 1.34 and 3.2(d).) Pursuant to
20 the express requirements of Labor Code § 2699(i), the PAGA Payment shall be allocated as follows:
21 75% shall be allocated to the Labor Workforce Development Agency ("LWDA") as its share of the civil
22 penalties and 25% allocated to the Individual PAGA Payments to be distributed to the Aggrieved
23 Employees based on the number of their respective PAGA Pay Periods. (Agreement at ¶ 3.2(d).) As
24 set forth in the accompanying proof of service, the LWDA has been served with this motion and the
25 Agreement. Decl. Nordrehaug at ¶22.

26 **III. CASE BACKGROUND**

27 The description of the case and claims, along with the procedural history is set forth in the
28 Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and the

1 exchange of documents and information in connection with the Action over nearly two years which
2 permitted Class Counsel to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and
3 14. The Parties participated in mediation on August 16, 2023 with Tripper Ortman, which after arms'
4 length negotiations both during and after the mediation, resulted in this Settlement. Decl. Nordrehaug,
5 ¶12.

6 **IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO** 7 **GRANT PRELIMINARY APPROVAL**

8 California "[p]ublic policy generally favors the compromise of complex class action litigation."
9 *Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 581 (2010) quoting *Cellphone Termination Fee*
10 *Cases*, 180 Cal.App.4th 1110, 1117-18 (2009). Class action settlements are approved where the
11 proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
12 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982), cert.
13 denied, 459 U.S. 1217 (1983)).

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

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

25
26 ² California courts look to federal authority on class actions. *Vasquez v. Superior Court*, 4 Cal.3d
27 800, 821 (1971). "It is well established that in the absence of relevant state precedents trial courts are
28 urged to follow the procedures prescribed in Rule 23 of the Federal Rules of Civil Procedure for
conducting class actions." *Frazier v. City of Richmond*, 184 Cal. App.3d 1491, 1499 (1986), citing
Green v. Obledo, 29 Cal.3d 126, 145-146 (1981).

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

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

11 The approval of a proposed settlement of a class action suit is a matter within the broad
12 discretion of the trial court. *Wershba, supra*, 91 Cal.App.4th at 234-235; *Dunk*, 48 Cal.App.4th 1794.
13 In considering a potential settlement for preliminary approval purposes, the trial court does not have
14 to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute,
15 and need not engage in a trial on the merits. *Wershba, supra*, 91 Cal.App.4th at 239-40; *Dunk, supra*,
16 48 Cal.App. 4th at 1807. The Ninth Circuit explains, "the very essence of a settlement is compromise,
17 'a yielding of absolutes and an abandoning of highest hopes.'" *Officers for Justice*, 688 F.2d at 624.
18 Thus, when analyzing the settlement, the amount is "not to be judged against a hypothetical or
19 speculative measure of what might have been achieved by the negotiators." *Officers for Justice*, 688
20 F.2d at 625, 628.

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

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

27 A number of factors are to be considered in evaluating a settlement for purposes of preliminary
28 approval. In determining whether to grant preliminary approval, the court considers whether the "(1)

1 the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, (2)
2 has no obvious deficiencies, (3) does not improperly grant preferential treatment to class representatives
3 or segments of the class, and (4) falls within the range of possible approval." *In re Tableware Antitrust*
4 *Litig.*, 484 F.Supp. 2d 1078, 1079 (N.D. Cal. 2007). Courts hold that "a presumption of fairness exists
5 where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery
6 are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
7 litigation; and (4) the percentage of objectors is small." *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.
8 App. 4th 116, 128 (2008). Here, the Settlement meets all of these criteria for preliminary approval and
9 therefore the presumption applies.

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

12 This settlement is the result of extensive and hard-fought litigation as well as negotiations
13 before an experienced and well-respected mediator. Defendants have expressly denied and continue
14 to deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiffs and
15 Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released
16 Class Claims of the Class in accordance with this Settlement.³

17 Class Counsel are experienced and qualified to evaluate the class claims, the defenses asserted,
18 and the risks and benefits of trial and settlement, and Class Counsel are particularly experienced in
19 wage and hour employment class actions, as Class Counsel has previously litigated and certified similar
20 claims against other employers. Decl. Nordrehaug at ¶31. The view of qualified and well-informed
21 counsel that a class action settlement is fair, adequate, and reasonable is entitled to significant weight.

22 ³ The release applicable to the Class is appropriately tethered to allegations in the Action as the
23 "Released Class Claims" are defined as "all claims that were alleged, or reasonably could have been
24 alleged, based upon facts stated in the Operative Complaint which occurred during the Class Period,
25 including claims for unfair competition, failure to pay minimum wages, failure to pay overtime wages,
26 failure to provide meal periods, failure to provide rest periods, failure to provide accurate and itemized
27 wage statements, failure to reimburse business expenses, failure to timely pay wages during
28 employment, and failure to timely pay wages at termination. Except as expressly set forth in this
Agreement, Participating Class Members do not release any other claims, including claims for vested
benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment
insurance, disability, social security, workers' compensation, or claims based on facts occurring outside
the Class Period." (Agreement at ¶¶ 1.39 and 6.2.)

1 *See Kullar v. Foot Locker*, 168 Cal. App. 4th 116, 133 (2008) (the trial court "undoubtedly should
2 continue to place reliance on the competence and integrity of counsel, the involvement of a qualified
3 mediator, and the paucity of objectors to the settlement."); *Dunk*, 48 Cal. App. 4th at 1802.

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

13 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant is
14 Five Hundred Fifty-One Thousand Four Hundred Fifty-Nine Dollars (\$551,459). The Settlement is all-
15 in with no reversion to Defendant and no need to submit a claim form. Decl. Nordrehaug at ¶ 3.

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

28 Plaintiffs and Class Counsel recognize the expense and length of continuing to litigate and

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

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

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

14 The proposed Settlement herein has no "obvious deficiencies" and is well within the range of
15 possible approval. All Class Members will receive an opportunity to participate in the Settlement and
16 receive payment according to the same formula. (Agreement at ¶ 3.2(e).) Based upon 291 Class
17 Members who collectively worked 17,488 Workweeks (Agreement at ¶ 4.1), the Gross Settlement
18 Amount provides an average value of \$1,895 per Class Member and \$31 per Workweek and after
19 deductions the Net Settlement Amount provides an average recovery of \$1,014.73 per Class Member
20 and a recovery of \$16.30 per Workweek. 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 \$151,493 for the
25 alleged unpaid wages due to off-the-clock work at 5 minutes per shift, \$5,399 for the alleged unpaid
26 wages due to the regular rate miscalculation applicable to overtime, \$6,598 for the alleged unpaid
27 wages due to the regular rate miscalculation applicable to meal premiums and sick pay, \$349,514 for
28 alleged meal period damages based upon a 37.6% potential violation rate for shifts worked observed

1 in the time records and after deducting the meal premiums (\$93,538) actually paid by Defendants,
2 \$502,500 for alleged rest period damages based upon the same potential 37.6% violation rate observed
3 for meal periods, \$21,980 for alleged unreimbursed business expenses for personal cell phone usage
4 at \$5 per month. Decl. Nordrehaug, ¶6. As a result, the total damage valuation was calculated that
5 Defendants were subject to a maximum damage claim in the amount of \$1,037,484. As to potential
6 penalties, Plaintiffs calculated that potential waiting time penalties were a maximum range of between
7 \$399,812 and \$1,106,849, depending on the predicate violation, and potential maximum wage statement
8 penalties were \$240,000.⁴ Defendants vigorously disputed Plaintiffs' calculations and exposure
9 theories. Decl. Nordrehaug, ¶6.

10 Consequently, the Gross Settlement Amount of \$551,459 represents more than 53% of the
11 maximum value of the alleged damages at issue in this case at the time this Settlement was negotiated.⁵
12 The above maximum calculations should then be adjusted in consideration for both the risk of class
13 certification and the risk of establishing class-wide liability on all claims. Given the amount of the
14 settlement as compared to the potential value of claims in this case and the defenses asserted by
15 Defendants, this settlement is fair and reasonable.⁶ Clearly, the goal of this litigation has been met.

17 ⁴ While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
18 226, at mediation Plaintiffs recognized that these claims were subject to additional, separate defenses
19 asserted by Defendants, including, a good faith dispute defense as to whether any premium wages for
20 meal or rest periods or other wages were owed given Defendants' position that Plaintiffs and Class
21 Members were properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584
22 (2010) ("There is no willful failure to pay wages if the employer and employee have a good faith
23 dispute as to whether and when the wages were due.").

24 ⁵ Because the PAGA claim is not a class claim and primarily is paid to the State of California,
25 Plaintiffs have not included the PAGA claim in this discussion of the value of the class claims. The
26 PAGA claim is addressed in the Decl. Nordrehaug at ¶33.

27 ⁶ See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a
28 settlement where the settlement amount constituted approximately 25% of the estimated overtime
damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12
(N.D. Cal. 2015) (granting final approval where "the proposed Total Settlement Amount represents
approximately 10% of what class might have been awarded had they succeeded at trial."); *Dunleavy
v. 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

Decl. Nordrehaug, ¶6.

Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by Defendants present serious threats to the claims of the Plaintiffs and the other Class Members. Defendants asserted that Defendants' practices complied with all applicable Labor laws. Defendants argued that Class Members were paid for all time worked, that all work time was properly recorded, and that the regular rate was properly calculated. Defendants contend that its meal and rest period policies fully complied with California law and Defendants did not fail to provide the opportunity for legally required meal and rest breaks. Defendants could argue that their payment of significant meal period premiums is evidence of lawful practices. Defendants contend that there was no failure to pay for business expenses and any cell phone usage was merely convenient and voluntary such that reimbursement was not legally required. Finally, Defendants could argue that the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), weakened Plaintiffs' claims, on liability, value, and class certifiability as to the meal and rest period claims. Defendants also argue that based on their facially lawful practices, Defendants acted in good faith and without willfulness, which if accepted would negate the claims for waiting time penalties and/or inaccurate wage statements. If successful, Defendants' defenses could eliminate or substantially reduce any recovery to the Class. While Plaintiffs believe that these defenses could be overcome, Defendants maintain these defenses have merit and therefore present a serious risk to recovery by the Class. Decl. Nordrehaug, ¶ 24.

There was also a significant risk that, if the Action was not settled, Plaintiffs would be unable to obtain a certified class and maintain the certified class through trial, and thereby not recover on behalf of any employees other than themselves. At the time of the mediation, Defendants forcefully opposed the propriety of class certification, arguing that individual issues precluded class certification. Further, as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class-wide recovery even

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 where the class has been certified. While other cases have approved class certification in wage and
2 hour claims, class certification in this action was hotly disputed and the maintenance of a certified class
3 through trial was by no means a foregone conclusion. Decl. Nordrehaug, ¶ 25.

4 After arm's length negotiations between experienced and informed counsel, the Parties
5 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of
6 \$551,459. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

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

13 2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
14 (9th Cir. 2000)).

15 **3. The Settlement Does Not Improperly Grant Preferential Treatment To** 16 **Class Representatives or Segments Of The Class**

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

22 Plaintiffs will apply to the Court for Class Representative Service Payments in consideration
23 for their service and for the risks undertaken on behalf of the Class. (Agreement at ¶ 3.2(a).) Plaintiffs
24 performed their duties admirably by working with Class Counsel over the course of litigation. The
25 Declarations of the Plaintiffs are submitted herewith in support. Decl. Nordrehaug at ¶27. At this
26 stage, the requested service award of \$12,500 is well within the accepted range of awards for purposes
27 of preliminary approval. *See e.g. Andrews v. Plains All Am. Pipeline L.P.*, 2022 U.S. Dist. LEXIS
28 172183, at *11 (C.D. Cal. 2022) (finding that the requested service awards of \$15,000 each are
appropriate); *Reynolds v. Direct Flow Med., Inc.*, 2019 U.S. Dist. LEXIS 149865, at *19 (N.D. Cal.
2019) (granting request for \$12,500 service award); *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S.
Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500 where average class member payment was

1 \$351); *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D.Cal. Oct. 06, 2008)
2 (awarding \$25,000 service award to each of six plaintiffs in overtime class action); *Glass v. UBS Fin.*
3 *Servs.*, 2007 WL 221862, *16-17 (N.D. Cal. 2007) (awarding \$25,000 service award in overtime class
4 action and a pool of \$100,000 in enhancements). As explained in *Glass*, service awards are routinely
5 awarded to class representatives to compensate the employees for the time and effort expended on the
6 case, for the risk of litigation, for the fear of suing an employer and retaliation there from, and to serve
7 as an incentive to vindicate the statutory rights of all employees. 2007 WL 221862 at *16-17.

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

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

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

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

28 Plaintiffs contend that the proposed settlement meets all of the requirements for class

1 certification under California Code of Civil Procedure § 382 as demonstrated below, and therefore, the
2 Court may appropriately approve the Class as defined in the Agreement. This Court should
3 conditionally certify the Class for settlement purposes only, defined as follows:

4 All individuals who are or previously were employed by Defendants Curaleaf CA, Inc.,
5 Cura CA LLC, and Cura CS Inc. in the State of California on a non-exempt basis at any
time during the Class Period.

6 (Agreement at ¶ 1.5.)

7 The Class Period is January 27, 2018 to November 16, 2023. (Agreement at ¶ 1.13.)

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

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

12 Code of Civil Procedure Section 382 authorizes class actions “when the question is one
13 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
14 certification has the burden to establish the existence of both an ascertainable class and
a well-defined community of interest among class members. (*citations omitted*). The
15 “community of interest” requirement embodies three factors: (1) predominant common
questions of law or fact; (2) class representatives with claims or defenses typical of the
class; and (3) class representatives who can adequately represent the class.

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

17 While Defendants reserve all rights to dispute that the Plaintiffs can satisfy these requirements,
18 the Parties agree that Defendants will not dispute that these requirements may be satisfied in this case
19 for purposes of settlement only and therefore, the proposed Class should be certified for purposes of
20 settlement only. (Agreement at ¶ 2.9.)

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

22 Plaintiffs bring this action on behalf of a Class of non-exempt employees of Defendants during
23 the Class Period. Plaintiffs assert that all of these individuals are ascertainable because the class
24 members can readily be determined through examination of Defendants’ files. Given that the Class
25 consists of 291 individuals, Plaintiffs maintain that numerosity is clearly satisfied. *See Bowles v.*
26 *Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose v. City of*
27 *Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.)
28

1 Here, Plaintiffs assert that the 291 current and former employees that comprise the Class can be
2 identified based on Defendants' records and are sufficiently numerous for class certification. Decl.
3 Nordrehaug at ¶30.

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

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

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

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

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

27 The typicality requirement requires the Plaintiffs to demonstrate that the members of the class
28 have the same or similar claims as the Plaintiffs. "The typicality requirement is met when the claims

1 of the [p]laintiff arise from the same event or are based on the same legal theories.” *Tate v.*
2 *Weyerhaeuser Co.*, 723 F.2d 598, 608 (8th Cir. 1983). In *Hanlon, supra*, 150 F.3d at 1020, the Ninth
3 Circuit held that “[u]nder the rule’s permissive standards, representative claims are ‘typical’ if they are
4 reasonably coextensive with those of absent class members; they need not be substantially identical.”

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

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

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

1 purposes of this Settlement only.

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

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

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

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

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

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

19 The Court has broad discretion in approving a practical notice program. The Parties have
20 agreed upon procedures by which the Class Members will be provided with written notice of the
21 Settlement similar to that approved and utilized in hundreds of class action settlements. In accordance
22 with the Agreement, Defendants will provide to the Administrator a confidential electronic spreadsheet
23 containing the Class Data. (Agreement at ¶ 4.2.) Within 14 days after receiving the Class Data, the
24 Administrator will mail the Class Notice to all Class Members via first-class U.S. Mail using the most
25 current mailing address information available. (Agreement at ¶ 8.4(b).) A Spanish translation of the
26 Class Notice Packet will be included in the mailing. (Agreement at ¶ 1.11.)

27 The Class Notice, drafted jointly and agreed upon by the Parties through their respective counsel
28 and to be approved by the Court, includes all relevant information. (See Exhibit “A” to the Agreement.)
The Class Notice will include, among other information: (i) information regarding the Action; (ii) the
impact on the rights of the Class Members if they do not opt out, including a description of the

1 applicable release; (iii) information to the Class Members regarding how to opt out and how to object
2 to the Settlement; (iv) the estimated Individual Class Payment for each of the Class Members; (iii) the
3 amount of attorneys' fees and expenses to be sought; (v) the amount of the Plaintiffs' service award
4 request; and (vi) the anticipated expenses of the Administrator. Decl. Nordrehaug at ¶32.

5 The Class Notice will state that the Class Members shall have forty-five (45) days from the date
6 that the Class Notice is mailed to them (the "Response Deadline") to request exclusion (opt-out) or to
7 submit a written objection. (Agreement at ¶¶ 1.43, 8.5, 8.7.) Class Members shall be given the
8 opportunity to object to the Settlement and/or requests for attorneys' fees and expenses and to appear
9 at the Final Approval Hearing. (Agreement at ¶ 8.7.) Class Members who do not submit a timely and
10 proper request to opt-out will automatically receive a payment of their Individual Class Payment. This
11 notice program was designed to meaningfully reach the Class Members and it advises them of all
12 pertinent information concerning the Settlement. Decl. Nordrehaug at ¶32. The mailing and
13 distribution of the Class Notice satisfies the requirements of due process and is the best notice
14 practicable under the circumstances and complies with Rules of Court 3.766 and 3.769(f).

15 16 **VII. CONCLUSION**

17 Plaintiffs respectfully request that the Court preliminarily approve the proposed settlement and
18 sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the final
19 approval hearing for the proposed date of September 13, 2024, which date is at least one hundred
20 twenty (120) days from the date of Preliminary Approval.

21 Dated: April 4, 2024

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

22 By: /s/ Kyle Nordrehaug
23 Kyle R. Nordrehaug, Esq.
24 Attorney for Plaintiffs
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