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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF LOS ANGELES**

LOLA MARCUM and JOSE G.  
IRIZARRY, on behalf of the State of  
California as private attorneys general, and  
as individuals, on behalf of themselves and  
on behalf of all persons similarly situated,

Plaintiff,

vs.

HUNTSMAN ADVANCED MATERIALS  
AMERICAS LLC, a Limited Liability  
Company; HUNTSMAN  
INTERNATIONAL LLC, a Limited  
Liability Company; and DOES 1 through  
50, inclusive,

Defendants.

**Case No. 22STCV03845**

*[Consolidated with Case No. 22STCV22712]*

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

Hearing Date: February 2, 2024

Hearing Time: 10:30 a.m.

Judge: Hon. Stuart M. Rice  
Dept: SS-1

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Trial Date: Not set

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1     **I.     INTRODUCTION**

2             Plaintiffs Lola Marcum and Jose G. Irizarry (“Plaintiffs”) will move for an order: (1)  
3     preliminarily approving the proposed settlement of this class action with Defendants Huntsman  
4     International LLC and Huntsman Advanced Materials Americas LLC (“Defendants”); (2) for settlement  
5     purposes only, conditionally certifying the Class, which is comprised of “all individuals who were  
6     employed by Defendants Huntsman International LLC and Huntsman Advanced Materials Americas  
7     LLC in California and classified as an hourly non-exempt employee at any time during the Class  
8     Period”, which is January 31, 2018 through February 17, 2023; (3) provisionally appointing Plaintiffs  
9     as the representatives of the Class; (4) provisionally appointing Norman B. Blumenthal, Kyle R.  
10    Nordrehaug, and Aparajit Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP and Joseph  
11    Lavi and Vincent Granberry of Lavi & Ebrahimian, LLP as Class Counsel for the Class; (5) approving  
12    the form and method for providing notice to the Class of the proposed settlement; (6) directing that  
13    notice of the proposed settlement be given to the Class; (7) appointing ILYM Group, Inc. as the  
14    Administrator; and (8) scheduling a final approval hearing date in approximately four months to  
15    consider the Plaintiffs’ motion for final approval of the settlement and for approval of attorneys’ fees  
16    and expenses. Plaintiffs and Defendants have reached a full and final settlement of the above-captioned  
17    action, which is set forth in the Class Action and PAGA Settlement Agreement (the “Agreement”) filed  
18    concurrently with the Court.<sup>1</sup> A copy of the fully executed Agreement is attached as Exhibit #1 to the  
19    Declaration of Kyle Nordrehaug (“Decl. Nordrehaug”), served and filed herewith, and the form of the  
20    Agreement is based on the Los Angeles Superior Court model form for class and PAGA settlements.  
21    A redline comparison between the Agreement and the Court’s model form for a class and PAGA  
22    settlement is attached as Exhibit #2 to the Decl. Nordrehaug.

23             As consideration for this Settlement, the Gross Settlement Amount is Four Hundred Eighty  
24    Thousand Dollars (\$480,000) to be paid by Defendants, as set forth in the Agreement. The Gross  
25    Settlement Amount will settle all issues pending in the Action between the Parties and will be made in  
26    full and final settlement of the released claims. The Gross Settlement Amount includes all payments  
27

28             <sup>1</sup> Capitalized terms shall have the same meaning as defined in the Agreement.

1 of Individual Class Payments to the Participating Class Members, the Administration Expenses Payment  
2 to the Administrator, the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment  
3 to Class Counsel, the Class Representative Service Payments to Plaintiffs, and the PAGA Penalties  
4 payment to the California Labor and Workforce Development Agency (the “LWDA”) and the  
5 Aggrieved Employees. The Gross Settlement Amount does not include the employer’s share of payroll  
6 taxes which will be separately paid by Defendants. The Settlement is all-in with no reversion to  
7 Defendants and no need for Class Members to submit claim forms. Decl. Nordrehaug at ¶3.

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

10 **\$480,000** (Gross Settlement Amount)

- 11 - \$20,000 (Plaintiffs’ proposed service award not to exceed \$10,000 each)
- 12 - \$21,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- 13 - \$160,000 (Class Counsel Fees Payment - not to exceed one-third of settlement)
- 14 - \$7,500 (PAGA Penalties - 75% to LWDA / 25% to Aggrieved Employees)
- 15 - \$8,750 (Administration Expenses Payment - not to exceed amount)

16 **\$262,750** (Net Settlement Amount)

17 Based upon 103 Class Members who collectively worked 14,088 Workweeks, the Gross Settlement  
18 Amount provides a value of \$4,665 per Class Member and \$34 per Workweek and, after deductions,  
19 the Net Settlement Amount provides an average recovery of \$2,550 per Class Member and \$18.65 per  
20 Workweek. Decl. Nordrehaug at ¶6.

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

28 **II. DESCRIPTION OF THE SETTLEMENT**

The Gross Settlement Amount is Four Hundred Eighty Thousand Dollars (\$480,000).  
(Agreement at ¶ 1.22.) Under the Settlement, the Gross Settlement Amount consists of the following  
elements: (i) all Individual Class Payments and Individual PAGA Payments; (ii) the LWDA PAGA

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

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

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

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

1 dispute their Workweeks. (Agreement at ¶¶ 8.6 and 8.7, Ex. A.) Decl. Nordrehaug at ¶18.

2 A Participating Class Member must cash the check for his or her Individual Class Payment (and,  
3 if applicable, Individual PAGA Payment) within 180 days after it is mailed. (Agreement at ¶ 5.2.) Any  
4 settlement checks not cashed within 180 days will be voided and any funds represented by such checks  
5 sent to the California State Controller's Office, Unclaimed Property Division, in the name of the Class  
6 Member, thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil  
7 Procedure Section 384, subd. (b). (Agreement at ¶ 5.4.) Decl. Nordrehaug at ¶19.

8 Subject to Court approval, the Parties have agreed on ILYM Group to administer the settlement  
9 in this action (the "Administrator"). (Agreement at ¶ 1.2.) The Administrator will be paid for  
10 settlement administration in an amount not to exceed \$8,750. (Agreement at ¶ 3.2(c).) Decl.  
11 Nordrehaug at ¶20. A Declaration from ILYM is submitted herewith. See Decl. Nordrehaug at ¶37.

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

18 Subject to Court approval, Seven Thousand Five Hundred Dollars (\$7,500) will be paid from  
19 the Gross Settlement Amount in settlement of Plaintiffs' claim for civil penalties under the California  
20 Labor Code Private Attorneys General Act ("PAGA"), Cal. Labor Code Section 2698, *et seq.* Pursuant  
21 to the express requirements of Labor Code § 2699(i), the PAGA Penalties payment shall be allocated  
22 as follows: 75% (\$5,625) shall be allocated to the LWDA as its share of the civil penalties and 25%  
23 (\$1,875) allocated to the Aggrieved Employees and distributed as Individual PAGA Payments based  
24 on the number of their respective PAGA Pay Periods. (Agreement at ¶ 3.2(d).) As set forth in the  
25 accompanying proof of service, the LWDA has been served with this motion and the Agreement. Decl.  
26 Nordrehaug at ¶22.

### 27 **III. CASE BACKGROUND**

28 The description of the case and claims, along with the procedural history, is set forth in the

1 Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and an  
2 informal exchange of documents and information in connection with the Action which permitted Class  
3 Counsel to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and 14. The Parties  
4 participated in private mediation on November 20, 2022 with Louis Marlin, Esq., which after arm's  
5 length negotiations, resulted in this Settlement. Decl. Nordrehaug, ¶12.

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

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

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

22 The primary question presented on an application for preliminary approval of a proposed class  
23 action settlement is whether the proposed settlement is "within the range of possible approval." *Manual*  
24 *for Complex Litigation, Second* §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir.  
25 1982).<sup>2</sup> Preliminary approval is merely the prerequisite to giving notice so that "the proposed

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26 <sup>2</sup> 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*

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

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

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

19 In considering a potential settlement for preliminary approval purposes, the trial court need not  
20 reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute,  
21 and need not engage in a trial on the merits. *Wershba, supra*, 91 Cal.App.4th at 239-40; *Dunk, supra*,  
22 48 Cal.App. 4th at 1807. The Ninth Circuit explains, “the very essence of a settlement is compromise,  
23 ‘a yielding of absolutes and an abandoning of highest hopes.’” *Officers for Justice*, 688 F.2d at 624.  
24 The question whether a proposed settlement is fair, reasonable and adequate necessarily requires a  
25 judgment and evaluation by the attorneys for the parties based upon a comparison of “the terms of the  
26 compromise with the likely rewards of litigation.” *Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir.

27 \_\_\_\_\_  
28 *Green v. Obledo*, 29 Cal.3d 126, 145-146 (1981).

1 1982), *cert. denied* 464 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders of TMT*  
2 *Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)). Thus, when analyzing the settlement,  
3 the amount is “not to be judged against a hypothetical or speculative measure of what might have been  
4 achieved by the negotiators.” *Officers for Justice*, 688 F.2d at 625, 628.

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

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

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

25 **1. The Settlement Is The Product Of Serious, Informed And**  
26 **Arm’s Length Negotiations By Experienced Counsel.**

27 The Settlement is the result of extensive and hard-fought litigation as well as negotiations before  
28 an experienced and well-respected mediator. Defendants have expressly denied and continue to deny

1 any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiffs and Class  
2 Counsel have determined that it is desirable and beneficial to the Class to resolve the Released Class  
3 Claims in accordance with the Settlement.<sup>3</sup>

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

13 The Parties attended an arms-length mediation session with Louis Marlin, a respected and  
14 experienced mediator of wage and hour class actions, in order to reach the Settlement. In preparation  
15 for the mediation, Defendants provided Class Counsel with necessary information, including data for  
16 the Class. Plaintiffs analyzed the data with the assistance of a damages expert, Berger Consulting, and  
17 prepared and submitted a mediation brief and damage valuation to the Mediator. Following the all-day  
18 mediation, the Parties agreed to the Settlement, which was memorialized in the form of a Memorandum  
19 of Understanding. The final terms of the Settlement were negotiated and set forth in the Agreement  
20 now presented for this Court's approval. Decl. Nordrehaug at ¶ 5. Importantly, Plaintiffs and Class  
21 Counsel believe that this Settlement is fair, reasonable and adequate.

22 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant is  
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24  
25 <sup>3</sup> The release applicable to the Class is tethered to allegations in the Action as the "Released Class  
26 Claims" are "all claims that were alleged, or reasonably could have been alleged, based on facts stated  
27 in the Operative Complaint which occurred during the Class Period. Except as expressly set forth in this  
28 Agreement, Participating Class Members do not release any other claims, including claims for vested  
benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment  
insurance, disability, social security, workers' compensation, claims based on facts occurring outside  
the Class Period." (Agreement at ¶¶ 1.39 and 6.2.)

1 Four Hundred Eighty Thousand Dollars (\$480,000). The Settlement is all-in with no reversion to  
2 Defendants and no need for Class Members to submit claim forms. Decl. Nordrehaug at ¶3.

3 Class Counsel has conducted a thorough investigation into the facts of the class action. Over  
4 the course of more than two years, Class Counsel diligently evaluated the Class Members' claims  
5 against Defendants. Prior to the settlement negotiations, counsel for Defendants provided Class  
6 Counsel with access to necessary information for the Class. In addition, Class Counsel has previously  
7 negotiated settlements with other employers in actions involving nearly identical issues and analogous  
8 defenses. Based on the informal discovery and their own independent investigation, evaluation and  
9 experience, Class Counsel believes that the settlement with Defendants on the terms set forth in the  
10 Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known  
11 facts and circumstances, including the risk of significant delay, the risk that the claims would not be  
12 allowed to proceed on a class or representative basis, the defenses asserted by Defendants, and potential  
13 appellate issues. Decl. Nordrehaug at ¶ 14.

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

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

26 **2. The Settlement Has No "Obvious Deficiencies" And Falls Well Within**  
27 **The Range For Approval.**

28 The proposed Settlement has no "obvious deficiencies" and is well within the range of possible

1 approval. All Class Members will receive an opportunity to participate in the Settlement and receive  
2 payment according to the same formula. (Agreement at ¶ 3.2(e).) Based upon 103 Class Members who  
3 collectively worked 14,088 Workweeks, the Gross Settlement Amount provides a value of \$4,665 per  
4 Class Member and \$34 per Workweek and, after deductions, the Net Settlement Amount provides an  
5 average recovery of \$2,550 per Class Member and \$18.65 per Workweek. Decl. Nordrehaug, ¶6.

6 The calculations to compensate for the amount due to the Class Members at the time the  
7 Settlement was negotiated were calculated by Plaintiffs' expert, Berger Consulting, in advance of  
8 mediation. Class Counsel analyzed the data for putative class members and determined the potential  
9 maximum damages for the class claims. For the Class, the maximum value of the claim for unpaid  
10 wages due to the alleged miscalculation of the regular rate applicable to overtime pay and meal  
11 premiums was \$10,117, the maximum value of the claim for unpaid wages due to alleged off-the-clock  
12 work for COVID checks was \$86,799, the maximum potential damages for alleged meal period  
13 violations were estimated to be only \$296 based upon a 2% violation rate observed in the time records  
14 and after deduction of meal premiums paid covering nearly all violations in the records, the maximum  
15 potential damages for alleged rest period violations were estimated to be \$1,458,658 based upon an  
16 alleged 100% violation rate, and the maximum potential damages for the alleged failure to reimburse  
17 business expenses were calculated to be \$102,150 based upon \$30 per month. In total, the damages for  
18 the Class were calculated to have a maximum potential total value of \$1,658,019. In addition, Plaintiff  
19 calculated that the maximum value of the potential waiting time penalties were \$225,372, and the  
20 maximum value of the potential wage statement penalties were \$174,700.<sup>4</sup> Decl. Nordrehaug, ¶6.

21 Consequently, the Gross Settlement Amount represents more than 28% of Plaintiffs' calculation  
22 of the potential maximum damages at issue for the Class in this case, assuming these amounts could  
23

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24  
25 <sup>4</sup> While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and  
26 226, at mediation Plaintiffs recognized that these claims were subject to additional, separate defenses  
27 asserted by Defendants, including but not limited to, a good-faith dispute defense as to whether any  
28 premium wages for meal or rest periods or other wages were owed given Defendants' position that  
Plaintiffs and Class Members were properly compensated. *See Nordstrom Commission Cases*, 186 Cal.  
App. 4th 576, 584 (2010) ("There is no willful failure to pay wages if the employer and employee have  
a good faith dispute as to whether and when the wages were due.").

1 all be proven in full at trial.<sup>5</sup> Importantly, the highest valued claim was the rest period claim which was  
2 valued at a 100% violation rate, however, class members certainly received some rest periods so this  
3 valuation is likely overstated. The maximum calculations should then be realistically risk rated in  
4 consideration for both the risk of class certification and the risk of establishing class-wide liability on  
5 all claims. Given the amount of the Settlement as compared to the potential value of the claims, the  
6 Settlement is most certainly fair and reasonable.<sup>6</sup> Clearly, the goal of this litigation has been met. Decl.  
7 Nordrehaug, ¶6.

8 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*  
9 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by  
10 Defendants present serious threats to the claims of the Plaintiffs and the other Class Members.  
11 Defendants maintain that their practices complied with all applicable wage and hour laws. Defendants  
12 maintain that all Class Members' work time was properly recorded and compensated and that there was  
13 no miscalculation of the regular rate. Defendants contend that its meal and rest period policies and  
14 practices provide Class Members with meal and rest periods and that the payment of significant meal  
15 premiums is evidence of Defendants' legal compliant practices. As to expense reimbursement,  
16 Defendants maintains that it did not fail to provide reimbursement for necessary business expenses  
17 because, among other things, employees are not required to use their personal cell phones to perform  
18 their work. Defendants could argue that the decisions in *Brinker v. Superior Court*, 53 Cal. 4th 1004  
19 (2012), *Lockheed Martin Corp. v. Superior Ct.*, 29 Cal. 4th 1096, 1108 (2003), and *Salazar v. See's*  
20 *Candy Shops Inc.*, 64 Cal.App.5th 85 (2021), weakened Plaintiffs' claims in terms of liability and value,

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

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

1 and preclude his claim from proceeding on a class or representative basis. Defendants also maintain  
2 that a good faith dispute and absence of willfulness would negate the claims for waiting time penalties  
3 and/or failure to provide accurate itemized wage statements. If successful, Defendants' defenses could  
4 eliminate or substantially reduce any recovery to the Class. While Plaintiffs believe that these defenses  
5 could be overcome, Defendants maintain these defenses have merit and therefore present a serious risk  
6 to recovery by the Class. Decl. Nordrehaug, ¶ 24.

7       There was also a significant risk that, if the Action was not settled, Plaintiffs would be unable  
8 to obtain class certification and thereby not recover on behalf of any employees other than themselves.  
9 Defendants argued that the individual experience of each putative class member varied with respect to  
10 the claims, which would preclude the claims from proceeding on a class or representative basis. For  
11 instance, Plaintiffs' meal and rest period claims would require individualized inquiries into whether  
12 each employee took a compliant meal or rest period on a given shift and, if not, why. Plaintiffs are  
13 aware of other cases where class certification of similar claims was denied. *See e.g. Cacho v. Eurostar,*  
14 *Inc.*, 43 Cal. App. 5th 885 (2019) (denying certification of rest break claims). Finally, even if class  
15 certification was successful, as demonstrated by the California Supreme Court decision in *Duran v. U.S.*  
16 *Bank National Association*, 59 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class-  
17 wide recovery even where a class has been certified. While other cases have approved class  
18 certification of wage and hour claims, class certification in this Action would have been hotly disputed  
19 and was by no means a foregone conclusion. Decl. Nordrehaug, ¶ 25.

20       After arm's-length negotiations between experienced and informed counsel, the Parties  
21 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of  
22 \$480,000.00. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

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

27 2007 WL 221862, at \*4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458  
28 (9th Cir. 2000)).

1                               **3.     The Settlement Does Not Improperly Grant Preferential Treatment To**  
2                               **Class Representatives Or Segments Of The Class.**

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

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

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

26             The stage of the proceedings at which the Settlement was reached also militates in favor of  
27 preliminary approval and, ultimately, final approval of the Settlement. Class Counsel has conducted  
28 a thorough investigation into the facts of the class action. Class Counsel began investigating the Class  
Members' claims before the Action was filed. Class Counsel engaged in an investigation of the claims

1 and conducted a review and analysis of the relevant documents and data. Class Counsel was also  
2 experienced with the claims at issue here, as Class Counsel previously litigated and settled similar  
3 claims in other actions. Accordingly, the agreement to settle did not occur until Class Counsel  
4 possessed sufficient information to make an informed judgment regarding the likelihood of success on  
5 the merits and the results that could be obtained through further litigation. Decl. Nordrehaug at ¶28.

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

14 In *Glass*, the Northern District of California granted final approval of an overtime wage action  
15 although in *Glass* no formal discovery had been conducted prior to the settlement. *Glass*, 2007 U.S.  
16 Dist. LEXIS 8476 at \*14 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d at 459).  
17 Here, Class Counsel was in an equally good position to evaluate the fairness of this Settlement because  
18 Class Counsel received relevant documents and data through informal discovery, evaluated the  
19 information with the assistance of an expert, and performed independent investigations and due  
20 diligence to confirm the accuracy of the information supplied by Defendants.

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

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

26 All individuals who were employed by Defendants Huntsman International LLC and  
27 Huntsman Advanced Materials Americas LLC in California and classified as an hourly  
non-exempt employee at any time during the Class Period.

28 (Agreement at ¶ 1.5.)

1 The “Class Period” is from January 31, 2018 through February 17, 2023. (Agreement at ¶ 1.13.)

2 **A. Class Certification for Purposes Of Settlement.**

3 The California Supreme Court has summarized the standard for determining whether class  
4 certification is appropriate under California Code of Civil Procedure section 382 as follows:

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

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

14 Plaintiffs contend that the proposed Class satisfies the criteria for certification under Code of  
15 Civil Procedure section 382. Defendants dispute that Plaintiffs can satisfy any of these requirements  
16 for class certification in the litigation context, but does not oppose certification for purposes of the  
17 Settlement. Accordingly, the proposed Class should be certified for purposes of the Settlement only.  
18 (Agreement at ¶ 2.11.)

19 **1. Ascertainability And Numerosity.**

20 Plaintiffs bring this Action on behalf of a Class of non-exempt, hourly employees who worked  
21 for Defendants during the applicable Class Period. Plaintiffs assert that all of these individuals are  
22 ascertainable because the class members can readily be determined through examination of Defendants’  
23 files. Given that the Class consists of approximately 103 members, Plaintiffs maintain that numerosity  
24 is clearly satisfied. *See Bowles v. Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members  
25 sufficiently numerous); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of 48 members  
26 satisfies numerosity requirement.) Here, Plaintiffs assert that the 103 individuals who comprise the  
27 Class can be identified based on Defendants’ records and are sufficiently numerous for class  
28 certification. Decl. Nordrehaug at ¶30.

**2. Predominance of Common Issues Of Law and Fact.**

Predominance of common issues of law or fact does not require that the common issues be  
dispositive of the entire controversy or even that they be dispositive of all liability issues. 1 *Newberg*

1 on *Class Actions*, Section 4.25 at 4-82, 4-83 (1992). “Predominance is a comparative concept, and ‘the  
2 necessity for class members to individually establish eligibility and damages does not mean individual  
3 fact questions predominate.’” *Sav-On*, 34 Cal. 4th at 334.

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

10 Here, Plaintiffs contend that common questions of law and fact are present, and specifically the  
11 common questions of whether Defendants’ practices were lawful, whether Class members were lawfully  
12 compensated for all hours worked, whether Defendants properly calculated wages, whether the  
13 Defendants failed to provide all legally required meal and rest periods to Class Members, whether  
14 Defendants failed to provide required expense reimbursement, and whether Class Members are entitled  
15 to damages and penalties as a result of these alleged practices. Decl. Nordrehaug, ¶30.

### 16 3. Typicality.

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

23 In the Action, Plaintiffs contend that there can be little doubt that the typicality requirement is  
24 satisfied. Plaintiffs worked for Defendants as non-exempt, hourly employees during the Class Period.  
25 Plaintiffs contend that, like every other member of the Class, they were subjected to the same practices  
26 and policies of Defendants and are subject to the same defenses. Thus, Plaintiffs assert that the claims  
27 of Plaintiffs and the Class Members arise from the same course of conduct by the Defendants, involve  
28 the same employment policies and practices of Defendants, and are based on the same legal theories.

Decl. Nordrehaug at ¶30. For purposes of settlement, Plaintiffs maintain that the typicality requirement is met as to the common issues presented in this case.

#### 4. Adequacy.

Plaintiffs contend that the Class Members are adequately represented here because Plaintiffs and Class Counsel (a) do not have any conflicts of interest with other Class members, and (b) will prosecute the case vigorously on behalf of the Class. *Hanlon*, 150 F.3d at 1020. First, Plaintiffs are well aware of their duties as the representative of the Class and have actively participated in the prosecution of this case to date. Plaintiffs effectively communicated with counsel, provided documents to counsel, and participated in the investigation and negotiations in the Action. Second, Plaintiffs retained competent counsel who are experienced in employment class actions and who have no conflicts. Decl. Nordrehaug at ¶ 31; Declaration of Vincent Granberry. Third, there is no antagonism between the interests of the Plaintiffs and those of the Class. Both Plaintiffs and the Class Members seek monetary relief under the same set of facts and legal theories.

#### 5. Superiority.

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

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

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

Here, Plaintiffs contend that a class action is the superior mechanism for resolution of the claims as pled by the Plaintiffs.

#### VI. THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE

The Court has broad discretion in approving a practical notice program. *7- Eleven Owners for*

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

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

18       The Class Notice will state that the Class Members shall have sixty (60) days from the date that  
19 the Notice is mailed to them (the “Response Deadline”) to request exclusion (opt-out), and that the  
20 Response Deadline shall be extended 14 days in the event of a re-mailing. (Agreement at ¶¶ 1.43,  
21 8.5(a).) Class Members shall be given the opportunity to object to the Settlement and/or requests for  
22 attorneys’ fees and expenses and to appear at the Final Approval Hearing. (Agreement at ¶ 8.7.) Class  
23 Members who do not submit a timely and proper request to opt out will automatically receive a payment  
24 of their Individual Class Payment (and, if applicable, their Individual PAGA Payment). This notice  
25 program was designed to meaningfully reach the Class Members and it advises them of all pertinent  
26 information concerning the Settlement. Decl. Nordrehaug at ¶32. The mailing and distribution of the  
27 Class Notice satisfies the requirements of due process, is the best notice practicable under the  
28 circumstances, and complies with Rules of Court 3.766 and 3.769(f).

1 **VII. CONCLUSION**

2 Based on the foregoing, the Parties respectfully request that the Court preliminarily approve the  
3 proposed settlement and sign the proposed Preliminary Approval Order, which is submitted herewith,  
4 and schedule the final fairness hearing for a date in approximately four months.

5 Dated: January 9, 2024

**BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

6 By: /s/ Kyle Nordrehaug

7 Kyle R. Nordrehaug, Esq.

8 Attorney for Plaintiffs  
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