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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

HAMZA KISSAM and ASIA
CRAWFORD, individuals, on behalf of
themselves and on behalf of all persons
similarly situated,

Plaintiff,

vs.

HAWTHORNE HYDROPONICS LLC, a
Limited Liability Company; and DOES 1
through 50, inclusive,

Defendants.

Case No. CIVSB2203720

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

Hearing Date: June 17, 2025

Hearing Time: 1:30 p.m.

(Hearing set at 1/31/25 hearing)

Judge: Hon. Joseph T. Ortiz

Dept: 17

Date Filed: March 3, 2022

Trial Date: Not set

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1 **I. INTRODUCTION**

2 Plaintiffs Hamza Kissam and Asia Crawford (“Plaintiffs”) will move for an order: (1)
3 preliminarily approving the proposed settlement of this class action with Defendant Hawthorne
4 Hydroponics, LLC (“Defendant”); (2) for settlement purposes only, conditionally certifying the Class,
5 which is comprised of “all individuals who are or previously were employed by Defendant Hawthorne
6 Hydroponics, LLC who were classified as non-exempt in the State of California at any time during the
7 Class Period”, which is March 3, 2018 through December 12, 2024; (3) provisionally appointing
8 Plaintiffs as the representatives of the Class; (4) provisionally appointing Blumenthal Nordrehaug
9 Bhowmik De Blouw LLP as Class Counsel for the Class; (5) approving the form and method for
10 providing notice to the Class of the proposed settlement; (6) directing that notice of the proposed
11 settlement be given to the Class; (7) appointing ILYM Group, Inc. as the Administrator; and
12 (8) scheduling a final approval hearing date, proposed for November 4, 2025, to consider the Plaintiffs’
13 motion for final approval of the settlement and for approval of attorneys’ fees, expenses and the service
14 awards. Plaintiffs and Defendant have reached a full and final settlement of the above-captioned action,
15 which is set forth in the Class Action and PAGA Settlement Agreement (the “Agreement”) filed
16 concurrently with the Court.¹ A copy of the fully executed Agreement is attached as Exhibit #1 to the
17 Amended Declaration of Kyle Nordrehaug (“Decl. Nordrehaug”), served and filed herewith, and the
18 form of the Agreement is based on the Los Angeles Superior Court model form for class and PAGA
19 settlements.

20 At the initial hearing on May 15, 2025, this Court asked Plaintiffs to correct three issues, which
21 are now corrected and addressed in this amended motion as follows:

- 22 1. The long form Agreement has been executed and is Exhibit #1 to the Decl. Nordrehaug.
- 23 2. The PAGA claim resolved by the Agreement consists of 556 Aggrieved Employees who
24 worked a total of approximately 24,722 PAGA Pay Periods. The valuation of the PAGA
25 claim is addressed in the Decl. Nordrehaug at paragraph 33.
- 26 3. The cost budget in the Agreement was set at not to exceed \$100,000 because Class
27

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

Counsel's current costs total \$83,783.21 incurred over 3 years of litigation. The details of these current costs are set forth in the Decl. Nordrehaug at paragraph 39. The Agreement provides that any difference between this budget and actual costs awarded will be retained in the Net Settlement Amount for payment to the Class, so there is no prejudice to the Class.

As consideration for this Settlement, the Gross Settlement Amount is One Million Four Hundred Eighty Thousand Dollars (\$1,480,000.00) to be paid by Defendant, as set forth in the Agreement. The Gross Settlement Amount will settle all issues pending in the Action between the Parties and will be made in full and final settlement of the released claims. The Settlement is all-in with no reversion to Defendant and no need for Class Members to submit claim forms. Decl. Nordrehaug at ¶3. The following is a table of the key financial terms of the Settlement and the proposed deductions:

\$1,480,000	(Gross Settlement Amount)
- \$30,000	(Plaintiffs' proposed service awards not to exceed \$15,000 each)
- \$100,000	(Class Counsel Litigation Expenses - not to exceed amount)
- \$493,333	(Class Counsel Fees Payment - not to exceed one-third of settlement)
- \$50,000	(PAGA Penalties - 75% to LWDA / 25% to Aggrieved Employees)
- \$11,000	(Administration Expenses Payment - not to exceed amount)
\$795,667	(Net Settlement Amount)

Based upon 717 Class Members who collectively worked 65,252 Workweeks (Agreement at ¶4.1), the Gross Settlement Amount provides a value of \$2,064 per Class Member and \$22 per Workweek and, after deductions, the Net Settlement Amount provides an average recovery of \$1,109.71 per Class Member and \$11.73 per Workweek. Decl. Nordrehaug at ¶6.

On December 12, 2024, the Parties participated in an all-day mediation session presided over by Jonathan Andrews, Esq., a respected and experienced mediator of wage and hour class actions. Following this mediation, the Parties reached an agreement to settle the Action. Decl. Nordrehaug at ¶5. The Settlement is fair, reasonable and adequate, and should be preliminarily approved because there is a substantial monetary payment, and there are substantial litigation and class-certification risks. Therefore, Plaintiffs respectfully request that this Court grant preliminary approval of the Agreement and enter the proposed order submitted herewith.

II. DESCRIPTION OF THE SETTLEMENT

The Gross Settlement Amount is One Million Four Hundred Eighty Thousand Dollars

1 (\$1,480,000). (Agreement at ¶ 1.22.) Under the Settlement, the Gross Settlement Amount consists of
2 the following elements: (i) all Individual Class Payments and Individual PAGA Payments; (ii) the
3 LWDA PAGA Payment; (iii) the Class Counsel Fees Payment and the Class Counsel Litigation
4 Expenses Payment; (iv) the Class Representative Service Payments; and (v) the Administration
5 Expenses Payment. (Agreement at ¶ 1.22.) The Gross Settlement Amount does not include
6 Defendant's share of payroll taxes. (Agreement at ¶ 3.1.) The Gross Settlement Amount shall be all-in
7 with no reversion to Defendants. (Agreement at ¶ 3.1.) Decl. Nordrehaug at ¶15.

8 Within sixty (60) days of the Effective Date, Defendant shall deposit the Gross Settlement
9 Amount with the Administrator. (Agreement at ¶ 4.3.) The distribution of Individual Class Payments
10 to Participating Class Members along with the other Court-approved distributions shall be made by the
11 Administrator within fourteen (14) days after Defendants fully fund the Gross Settlement Amount.
12 (Agreement at ¶ 5.1.) Decl. Nordrehaug at ¶16.

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

24 Class Members may choose to opt-out of the Settlement by following the directions in the Class
25 Notice. (Agreement at ¶ 8.5, Ex. A.) All Class Members who do not "opt out" will be deemed
26 Participating Class Members and will be bound by the Settlement and will be entitled to receive an
27 Individual Class Payment. (Agreement at ¶ 8.5(c).) All Aggrieved Employees, including any who
28 submit an opt-out request, still will receive an Individual PAGA Payment and will release the Released

1 PAGA Claims regardless of their request for exclusion. (Agreement at ¶¶ 6.3 and 8.5(d)) Finally, the
2 Class Notice will advise the Class Members of their right to object to the Settlement and/or dispute their
3 Workweeks. (Agreement at ¶¶ 8.6 and 8.7, Ex. A.) Decl. Nordrehaug at ¶18.

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

10 Subject to Court approval, the Parties have agreed on ILYM Group to administer the settlement
11 in this action (the "Administrator"). (Agreement at ¶ 1.2.) The Administrator will be paid for
12 settlement administration in an amount not to exceed \$11,000. (Agreement at ¶ 3.2(c).) Decl.
13 Nordrehaug at ¶20. A Declaration from ILYM Group is submitted herewith.

14 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
15 to exceed one-third of the Gross Settlement Amount as the Class Counsel Fees Payment. (Agreement
16 at ¶ 3.2(b).) Class Counsel will also be allowed to apply for an award of Class Counsel Litigation
17 Expenses Payment in an amount not to exceed \$100,000. (Agreement at ¶ 3.2(b).) Subject to Court
18 approval, the Agreement provides for a payment of no more than \$15,000 each to Plaintiffs as the Class
19 Representative Service Payments. (Agreement at ¶ 3.2(a).) Decl. Nordrehaug at ¶21.

20 Subject to Court approval, Fifty Thousand Dollars (\$50,000) will be paid from the Gross
21 Settlement Amount in settlement of Plaintiffs' claim for civil penalties under the California Labor Code
22 Private Attorneys General Act ("PAGA"), Cal. Labor Code Section 2698, *et seq.* Pursuant to the
23 express requirements of Labor Code § 2699(i), the PAGA Penalties payment shall be allocated as
24 follows: 75% (\$37,500) shall be allocated to the LWDA as its share of the civil penalties and 25%
25 (\$12,500) allocated to the Aggrieved Employees and distributed as Individual PAGA Payments based
26 on the number of their respective PAGA Pay Periods. (Agreement at ¶ 3.2(d).) As set forth in the
27 accompanying proof of service, the LWDA has been served with this motion and the Agreement. Decl.
28 Nordrehaug at ¶22.

1 **III. CASE BACKGROUND**

2 The description of the case and claims, along with the procedural history, is set forth in the
3 Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and an
4 informal exchange of documents, information, and data in connection with the Action which permitted
5 Class Counsel to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and 14. The
6 Parties participated in private mediation on December 12, 2024 with Jonathan Andrews, Esq., which
7 after arm's length negotiations, resulted in this Settlement. Decl. Nordrehaug, ¶12.

8
9 **IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO
10 GRANT PRELIMINARY APPROVAL**

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

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

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

1 1982).² Preliminary approval is merely the prerequisite to giving notice so that “the proposed
2 settlement... may be submitted to members of the prospective Class for their acceptance or rejection.”
3 *Sayaman v. Baxter Healthcare Corp.*, 2010 U.S. Dist. LEXIS 151997, *3 (C.D. Cal. 2010). There is
4 "a presumption of fairness . . . where . . . [a] settlement is reached through arms-length bargaining."
5 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 245 (2001) (citation omitted); *see also Cho v.*
6 *Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th 734, 742-45 (2009) (upholding trial court's
7 determination that settlement was "fair, reasonable and adequate" where the settlement "provided
8 valuable benefits to the class . . . that were 'particularly valuable in light of the risks plaintiff would have
9 faced if she proceeded to litigate her case.'"); *Newberg*, 3d Ed., §11.41, p.11-88. However, the ultimate
10 question of whether the proposed settlement is fair, reasonable and adequate is made after notice of the
11 settlement is given to the class members and a final settlement hearing is held by the Court.

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

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

20 In considering a potential settlement for preliminary approval purposes, the trial court need not
21 reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute,
22 and need not engage in a trial on the merits. *Wershba, supra*, 91 Cal.App.4th at 239-40; *Dunk, supra*,
23 48 Cal.App. 4th at 1807. The Ninth Circuit explains, “the very essence of a settlement is compromise,
24 ‘a yielding of absolutes and an abandoning of highest hopes.’” *Officers for Justice*, 688 F.2d at 624.

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 The question whether a proposed settlement is fair, reasonable and adequate necessarily requires a
2 judgment and evaluation by the attorneys for the parties based upon a comparison of “the terms of the
3 compromise with the likely rewards of litigation.” *Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir.
4 1982), *cert. denied* 464 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders of TMT*
5 *Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)). Thus, when analyzing the settlement,
6 the amount is “not to be judged against a hypothetical or speculative measure of what might have been
7 achieved by the negotiators.” *Officers for Justice*, 688 F.2d at 625, 628.

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

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

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

28 **1. The Settlement Is The Product Of Serious, Informed And**

1 **Arm's Length Negotiations By Experienced Counsel.**

2 The Settlement is the result of extensive and hard-fought litigation as well as negotiations before
3 an experienced and well-respected mediator. Defendant has expressly denied and continue to deny any
4 wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiffs and Class
5 Counsel have determined that it is desirable and beneficial to the Class to resolve the Released Class
6 Claims in accordance with the Settlement.³

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

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

23
24
25 ³ The release applicable to the Class is tethered to allegations in the Action as the "Released Class
26 Claims" are "all claims that were alleged, or reasonably could have been alleged, based on the facts
27 stated in the Operative Complaint which occurred during the Class Period during employment in a
28 non-exempt position in California, and expressly excluding all other claims including claims for vested
benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment
insurance, disability, social security, workers' compensation, and California class claims outside of the
Class Period." (Agreement at ¶¶ 1.38 and 6.2.)

1 Plaintiffs and Class Counsel believe that this Settlement is fair, reasonable and adequate.

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

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

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

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

27 The proposed Settlement has no "obvious deficiencies" and is well within the range of possible
28 approval. All Class Members will receive an opportunity to participate in the Settlement and receive

1 payment according to the same formula. (Agreement at ¶ 3.2(e).) Based upon 717 Class Members who
2 collectively worked 65,252 Workweeks (Agreement at ¶ 4.1), the Gross Settlement Amount provides
3 a value of \$2,064 per Class Member and \$22 per Workweek and, after deductions, the Net Settlement
4 Amount provides an average recovery of \$1,109.71 per Class Member and \$11.73 per Workweek.
5 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 potential damages for unpaid
10 wages due to rounding was \$42,488, the maximum potential damages for alleged off-the-clock work
11 at one hour per week was \$2,390,228, the maximum potential damages for unpaid overtime wages as
12 a result of the miscalculation of the regular rate was \$113,302, the maximum potential damages for sick
13 pay and meal premiums as a result of the miscalculation of the regular rate was \$114,921, the maximum
14 potential damages for the alleged unpaid overtime is \$258,783, the maximum potential damages for
15 alleged meal period violations were estimated to be \$834,808 based upon a 15.8% violation rate
16 observed in the time records and after deduction for meal premiums already paid by Defendant, the
17 maximum potential damages for alleged rest period violations were estimated to be \$1,067,194 based
18 upon the same 15.8% potential violation rate observed for meal breaks, and the maximum potential
19 damages for the alleged failure to reimburse business expenses were calculated to be \$89,785 based
20 upon \$5 per month. In total, the damages for the Class were calculated to have a maximum potential
21 total value of \$4,911,509. In addition, Plaintiffs calculated that the maximum value of the potential
22 waiting time penalties was between \$1,773,865 and \$3,983,731, depending on the predicate violation,
23 and the maximum value of the potential wage statement penalties was \$1,413,650.⁴ Decl. Nordrehaug,
24

25 ⁴ 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 Defendant, 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 Defendant's 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

¶6.

Consequently, the Gross Settlement Amount represents more than 30% of Plaintiffs' calculation of the potential maximum damages at issue for the Class in this case, assuming these amounts could all be proven in full at trial.⁵ Importantly, the recent decision that good faith belief of compliance by the employer in *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065 (2024), could completely negate the claims for waiting time and wage statement penalties, even if wages were owed to the class. The maximum calculations should then be realistically risk rated in consideration for both the risk of class certification and the risk of establishing class-wide liability on all claims. Given the amount of the Settlement as compared to the potential value of the claims, the Settlement is most certainly fair and reasonable.⁶ Clearly, the goal of this litigation has been met. 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 Defendant present serious threats to the claims of the Plaintiffs and the other Class Members. Defendant maintains that its practices complied with all applicable wage and hour laws. Defendant maintains that all Class Members' work time was properly recorded and compensated. Defendant contend that their meal and rest period policies and practices provide Class Members with meal and rest periods. Defendant could argue that its payment of significant meal period premiums was evidence of their compliant practices. As to expense reimbursement, Defendant maintains that they did not fail to provide reimbursement for necessary business expenses because, among other things, the alleged

a good faith dispute as to whether and when the wages were due.").

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

⁶ See *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000) approving settlement which represented "roughly one-sixth of the potential recovery"); *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."); *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 expenses were convenient and voluntary, and therefore not were required expenses giving rise to
2 reimbursement. Defendant could argue that the decisions in *Brinker v. Superior Court*, 53 Cal. 4th 1004
3 (2012), *Lockheed Martin Corp. v. Superior Ct.*, 29 Cal. 4th 1096, 1108 (2003), and *Salazar v. See's*
4 *Candy Shops Inc.*, 64 Cal.App.5th 85 (2021), weakened Plaintiffs' claims in terms of liability and value,
5 and preclude claims from proceeding on a class or representative basis. Defendant also maintains that
6 a good faith dispute and absence of willfulness would negate the claims for waiting time penalties
7 and/or failure to provide accurate itemized wage statements. See e.g. *Naranjo v. Spectrum Sec. Servs.,*
8 *Inc.*, 15 Cal. 5th 1056, 1065 (2024) ("if an employer reasonably and in good faith believed it was
9 providing a complete and accurate wage statement in compliance with the requirements of section 226,
10 then it has not knowingly and intentionally failed to comply with the wage statement law.") If
11 successful, Defendant's defenses could eliminate or substantially reduce any recovery to the Class.
12 While Plaintiffs believe that these defenses could be overcome, Defendant maintains these defenses
13 have merit and therefore present a serious risk to recovery by the Class. Decl. Nordrehaug, ¶ 24.

14 There was also a significant risk that, if the Action was not settled, Plaintiffs would be unable
15 to obtain class certification and thereby not recover on behalf of any employees other than themselves
16 Defendant argued that the individual experience of each putative class member varied with respect to
17 the claims, which would preclude the claims from proceeding on a class basis. For instance, Plaintiffs'
18 meal and rest period claims would require individualized inquiries into whether each employee took
19 a compliant meal or rest period on a given shift and, if not, why. Plaintiffs are aware of other cases
20 where class certification of similar claims was denied. See e.g. *Cacho v. Eurostar, Inc.*, 43 Cal. App.
21 5th 885 (2019) (denying certification of rest break claims). Defendant also argued that the existence
22 of arbitration agreements would bar and/or limit class certification. Finally, even if class certification
23 was successful, as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank*
24 *National Association*, 59 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class-wide
25 recovery even where a class has been certified. While other cases have approved class certification of
26 wage and hour claims, class certification in this Action would have been hotly disputed and was by no
27 means a foregone conclusion. Decl. Nordrehaug, ¶ 25.

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

1 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of
2 \$1,480,000.00. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

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

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

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

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

18 Plaintiffs will apply to the Court for Class Representative Service Payments in consideration
19 for their service and for the risks undertaken on behalf of the Class. (Agreement at ¶ 3.2(a).) Plaintiffs
20 performed their duties admirably by working with Class Counsel. Decl. Nordrehaug at ¶27. The
21 concurrently filed declarations of the Plaintiffs are presented herewith in support of the request. For
22 purposes of this preliminary approval stage, the not to exceed amount is well within the accepted range
23 of awards for purposes of preliminary approval, subject to the Court's final determination of the amount
24 at final approval. *See, e.g., Andrews v. Plains All Am. Pipeline L.P.*, 2022 U.S. Dist. LEXIS 172183,
25 at *11 (C.D. Cal. 2022) (finding that the requested service awards of \$15,000 each are appropriate);
26 *Reynolds v. Direct Flow Med., Inc.*, 2019 U.S. Dist. LEXIS 149865, at *19 (N.D. Cal. 2019) (granting
27 request for \$12,500 service award); *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386
28 (E.D. Cal. 2018) (awarding \$12,500 where average class member payment was \$351); *Louie v. Kaiser*
Foundation Health Plan, Inc., 2008 WL 4473183, *7 (S.D. Cal. Oct. 06, 2008) (awarding \$25,000
service award to each of six plaintiffs in overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL
221862, *16-17 (N.D. Cal. 2007) (awarding \$25,000 service award in overtime class action and a pool

1 of \$100,000 in enhancements). As explained in *Glass*, service awards are routinely awarded to class
2 representatives to compensate them for the time and effort expended on the case, for the risk of
3 litigation, for the fear of suing an employer and retaliation therefrom, and to serve as an incentive to
4 vindicate the statutory rights of all employees. 2007 WL 221862 at *16-17.

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

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

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

24 In *Glass*, the Northern District of California granted final approval of an overtime wage action
25 although in *Glass* no formal discovery had been conducted prior to the settlement. *Glass*, 2007 U.S.
26 Dist. LEXIS 8476 at *14 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d at 459).
27 Here, Class Counsel was in an equally good position to evaluate the fairness of this Settlement because
28 Class Counsel received relevant documents and data through informal discovery, evaluated the

1 information with the assistance of an expert, and performed independent investigations and due
2 diligence to confirm the accuracy of the information supplied by Defendants.

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

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

8 All individuals who are or previously were employed by Defendant Hawthorne
9 Hydroponics, LLC who were classified as non-exempt in the State of California at any
time during the Class Period.

10 (Agreement at ¶ 1.5.)

11 The “Class Period” is from March 3, 2018 through December 12, 2024. (Agreement at ¶ 1.13.)

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

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

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

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

23 Plaintiffs contend that the proposed Class satisfies the criteria for certification under Code of
24 Civil Procedure section 382. Defendant disputes that Plaintiffs can satisfy any of these requirements
25 for class certification in the litigation context, but does not oppose certification for purposes of the
26 Settlement. Accordingly, the proposed Class should be certified for purposes of the Settlement only.
27 (Agreement at ¶ 2.8.)

28 **1. Ascertainability And Numerosity.**

Plaintiffs bring this Action on behalf of a Class of non-exempt employees who worked for
Defendant during the applicable Class Period. Plaintiffs assert that all of these individuals are

ascertainable because the class members can readily be determined through examination of Defendant's files. Given that the Class consists of approximately 717 members, Plaintiffs maintain that numerosity is clearly satisfied. *See Bowles v. Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.) Here, Plaintiffs assert that the 717 individuals who comprise the Class can be identified based on Defendant's records and are sufficiently numerous for class 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 on Class Actions*, Section 4.25 at 4-82, 4-83 (1992). "Predominance is a comparative concept, and 'the necessity for class members to individually establish eligibility and damages does not mean individual fact questions predominate.'" *Sav-On*, 34 Cal. 4th at 334.

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

Here, Plaintiffs contend that common questions of law and fact are present, and specifically the common questions of whether Defendant's practices were lawful, whether Class members were lawfully compensated for all hours worked, whether the Defendant failed to provide all legally required meal and rest periods to Class Members, whether Defendant failed to provide required expense reimbursement, and whether Class Members are entitled to damages and penalties as a result of these alleged practices. Plaintiffs contend that certification of this Class is appropriate because Defendant allegedly engaged in uniform practices with respect to the Class Members. As a result, Plaintiffs maintain that these common questions of liability could be answered on a class wide basis. Decl. Nordrehaug, ¶30.

3. Typicality.

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

7 In the Action, Plaintiffs contend that there can be little doubt that the typicality requirement is
8 satisfied. Plaintiffs each worked for Defendant as a non-exempt employee during the Class Period.
9 Plaintiffs contend that, like every other member of the Class, they were subjected to the same practices
10 and policies of Defendant and are subject to the same defenses. Thus, Plaintiffs assert that the claims
11 of Plaintiffs and the Class Members arise from the same course of conduct by the Defendant, involve
12 the same employment policies and practices of Defendant, and are based on the same legal theories.
13 Decl. Nordrehaug at ¶30. For purposes of settlement, Plaintiffs maintain that the typicality requirement
14 is met as to the common issues presented in this case.

15 **4. Adequacy.**

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

26 **5. Superiority.**

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

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

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

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

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

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

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

22 The Class Notice, drafted jointly and agreed upon by the Parties through their respective counsel
23 and to be approved by the Court, includes all relevant information. (See Exhibit “A” to the Agreement.)
24 The Class Notice will include a Spanish translation. (Agreement at ¶ 1.11.) The Class Notice will
25 include, among other information: (i) information regarding the Action; (ii) the impact on the rights of
26 the Class Members if they do not opt out, including a description of the applicable release; (iii)
27 information to the Class Members regarding how to opt out and how to object to the Settlement; (iv)
28 the estimated Individual Class Payment (and, if applicable, Individual PAGA Payment) for each of the
Class Members and how to dispute the information used to calculate the payment; (iii) the amount of
attorneys’ fees and expenses to be sought; (v) the amount of the Plaintiffs’ service award request; and

1 (vi) the anticipated expenses of the Administrator. Decl. Nordrehaug at ¶32.

2 The Class Notice will state that the Class Members shall have sixty (60) days from the date that
3 the Notice is mailed to them (the “Response Deadline”) to request exclusion (opt-out), and that the
4 Response Deadline shall be extended 14 days in the event of a re-mailing. (Agreement at ¶¶ 1.42,
5 8.5(a).) Class Members shall be given the opportunity to object to the Settlement and/or requests for
6 attorneys’ fees and expenses and to appear at the Final Approval Hearing. (Agreement at ¶ 8.7.) Class
7 Members who do not submit a timely and proper request to opt out will automatically receive a payment
8 of their Individual Class Payment (and, if applicable, their Individual PAGA Payment). This notice
9 program was designed to meaningfully reach the Class Members and it advises them of all pertinent
10 information concerning the Settlement. Decl. Nordrehaug at ¶32. The mailing and distribution of the
11 Class Notice satisfies the requirements of due process, is the best notice practicable under the
12 circumstances, and complies with Rules of Court 3.766 and 3.769(f).

13 **VII. CONCLUSION**

14 Based on the foregoing, Plaintiff respectfully requests that the Court preliminarily approve the
15 proposed settlement and sign the proposed Preliminary Approval Order, which is submitted herewith,
16 and schedule the final approval hearing for October 2, 2025.

17 Dated: April 23, 2025

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
18 By: /s/ Kyle Nordrehaug
19 Kyle R. Nordrehaug, Esq.
Attorney for Plaintiffs