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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

THANH PHAN, an individual, on behalf
of herself and on behalf of all persons
similarly situated,
Plaintiffs,

vs.

ST. JUDE MEDICAL CENTER, a
California Corporation; ST. JUDE
HOSPITAL, a California Corporation; and
DOES 1 through 50, inclusive,
Defendants.

MARK MORANVILLE, as an individual
on behalf of himself and on behalf of all
others similarly situated,
Plaintiff,

vs.

ST. JUDE HOSPITAL, a California
Corporation; ST. JUDE HERITAGE
MEDICAL GROUP, A MEDICAL
CORPORATION, a California
Corporation; and DOES 1-100, inclusive,
Defendants.

CASE NO.: **30-2022-01244478-CU-OE-CXC**
[Consolidated with Case No.
30-2022-01246853-CU-OE-CXC]

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

Hearing Date: January 5, 2024
Hearing Time: 9:00 a.m.
Reservation No. 74162462

Judge: Hon. William D. Claster
Dept.: CX101

Action Filed: February 8, 2022
Trial Date: Not set

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1 **I. INTRODUCTION**

2 Plaintiffs Thanh Phan and Mark Moranville (“Plaintiffs”) respectfully submit this memorandum
3 in support of the unopposed motion for preliminary approval of the proposed class action settlement
4 with Defendant St. Jude Hospital dba St. Jude Medical Center (“Defendant”), and seek entry of an
5 order: (1) preliminarily approving the proposed settlement of this class action with Defendant; (2) for
6 settlement purposes only, conditionally certifying the Class, which is comprised of “all individuals who
7 were employed by Defendant in California and classified as a non-exempt employee at any time during
8 the Class Period” which is February 8, 2018 through July 27, 2023; (3) provisionally appointing
9 Plaintiffs as the representatives of the Class; (4) provisionally appointing Norman B. Blumenthal, Kyle
10 R. Nordrehaug, and Aparajit Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP; Michael
11 R. Crosner, Zachary M. Crosner, Jamie Serb, and Sepideh Ardestani of Crosner Legal, PC; and Derek
12 Tran of The Tran Firm as Class Counsel; (5) approving the form and method for providing class-wide
13 notice; (6) directing that notice of the proposed settlement be given to the class; (7) appointing ILYM
14 Group as Administrator, and (8) scheduling a final approval hearing date to consider Plaintiffs’ motion
15 for final approval of the settlement and for approval of attorneys’ fees and expenses. Plaintiffs and
16 Defendant (collectively the “Parties”) have reached a full and final settlement of the above-captioned
17 action, which is embodied in the Class Action and PAGA Settlement Agreement (“Agreement”) filed
18 concurrently with the Court.¹ 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. The form of the
20 Agreement is based upon the Los Angeles County Superior Court model form for a class and PAGA
21 settlement.

22 As consideration for this Settlement, the non-reversionary Gross Settlement Amount of Four
23 Million Dollars (\$4,000,000) (the “Gross Settlement Amount”) is to be paid by Defendant, as set forth
24 in the Agreement. The Gross Settlement Amount will settle all issues pending in the Action between
25 the Parties and will be made in full and final settlement of the Released Class Claims in exchange for
26 the payments to Participating Class Members from the Net Settlement Amount, and includes (a) the

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

costs of administration of the settlement, (b) all attorneys' fees and costs, (c) Class Representative Service Payments, and (d) the PAGA Penalties payment allocated 75% to the LWDA and 25% to the Aggrieved Employees. (Agreement at ¶ 1.22.) Decl. Nordrehaug at ¶3.

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

\$4,000,000	(Gross Settlement Amount)
- \$60,000	(Plaintiffs' proposed service award not to exceed \$30,000 each)
- \$20,000	(Class Counsel Litigation Expenses Payment - not to exceed amount)
- \$1,333,333	(Class Counsel Fees Payment - not to exceed 1/3 of settlement)
- \$80,000	(PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
- \$40,000	(Administration Expenses Payment - not to exceed amount)
\$2,446,667	(Net Settlement Amount)

Based upon 4,180 Class Members who collectively worked 594,959 Workweeks, the Gross Settlement Amount provides an average value of \$956 per Class Member and \$6.72 per Workweek and after deductions the Net Settlement Amount provides an average recovery of \$590.11 per Class Member and a recovery of \$4.14 per Workweek. Decl. Nordrehaug at ¶6.

On April 27, 2023, the Parties participated in an all-day mediation session presided over by Jeff Krivis, a respected and experienced mediator of wage and hour class actions. Following the mediation, the Parties agreed on the basic terms of a settlement pursuant to a mediator's proposal which was memorialized in the form of a Memorandum of Understanding. 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 significant 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 Four Million Dollars (\$4,000,000). (Agreement at ¶ 1.22.) Under the Settlement, the Gross Settlement Amount consists of the following elements: (1) payment of the Individual Class Payments to the Participating Class Members; (2) Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (3) Administration Expenses Payment; (4) the Class Representative Service Payments to the Plaintiffs; and (5) the PAGA Penalties payment. (Agreement

1 at ¶ 1.22.) The Gross Settlement Amount does not include Defendant's share of payroll taxes.
2 (Agreement at ¶ 3.1.) The Gross Settlement Amount shall be all-in with no reversion to Defendant.
3 (Agreement at ¶ 3.1.) Decl. Nordrehaug at ¶15.

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

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

20 Class Members may choose to opt-out of the Settlement by following the directions in the Class
21 Notice. (Agreement at ¶ 8.5, Ex. A.) A Request for Exclusion form and Dispute form will be included
22 in the Class Notice Packet. (Agreement at ¶ 1.12.) All Class Members who do not "opt out" will be
23 deemed Participating Class Members who will be bound by the Settlement and will be entitled to
24 receive an Individual Class Payment. (Agreement at ¶ 8.5(c).) All Aggrieved Employees, including
25 those who submit an opt-out request, will still be paid their allocation of the PAGA Penalties and will
26 remain subject to the release of the Released PAGA Claims regardless of their request for exclusion.
27 (Agreement at ¶¶ 6.3 and 8.5(d).) Finally, the Class Notice will advise the Class Members of their right
28

1 to object to the Settlement and/or dispute their Workweeks. (Agreement at ¶¶ 8.6 and 8.7, Ex. A.)
2 Decl. Nordrehaug at ¶18.

3 A Participating Class Member must cash his or her Individual Class Payment check within 180
4 days after it is mailed. (Agreement at ¶ 5.2.) Any settlement checks not cashed within 180 days will
5 be voided and any funds represented by such checks to the California Controller's Unclaimed Property
6 Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements
7 of C.C.P. § 384(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 ("Administrator"). (Agreement at ¶ 1.2.) The Administrator will be paid for settlement
10 administration in an amount not to exceed \$40,000. (Agreement at ¶ 3.2(c).) Decl. Nordrehaug at ¶20.

11 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
12 to exceed one-third of the Gross Settlement Amount, as the Class Counsel Fees Payment. (Agreement
13 at ¶ 3.2(b).) Class Counsel will also be allowed to apply separately for an award of Class Counsel
14 Litigation Expenses Payment in an amount not to exceed \$20,000. (Agreement at ¶ 3.2(b).) Subject
15 to Court approval, the Agreement provides for a payment of no more than \$30,000 each to the Plaintiffs
16 as the Class Representative Service Payments.² (Agreement at ¶ 3.2(a).) Decl. Nordrehaug at ¶21.

17 Subject to Court approval, the PAGA Penalties will be paid from the Gross Settlement Amount
18 for PAGA penalties under the California Private Attorneys General Act, Cal. Labor Code Section 2698,
19 *et seq.* ("PAGA"). The PAGA Penalties are \$80,000. (Agreement at ¶¶ 1.34 and 3.2(d).) Pursuant to
20 the express requirements of Labor Code § 2699(i), the PAGA Payment shall be allocated as follows:
21 75% shall be allocated to the Labor Workforce Development Agency ("LWDA") as its share of the civil
22 penalties and and 25% allocated to the Individual PAGA Payments to be distributed to the Aggrieved
23 Employees based on the number of their respective PAGA Pay Periods. (Agreement at ¶ 3.2(d).) As set
24 forth in the accompany proof of service, the LWDA has been served with this motion and the

25
26 ² The Plaintiffs understand that the not to exceed amount is higher than normal, however, there are
27 mitigating factors justifying the increased not to exceed amount. See Declaration of Phan at ¶15;
28 Declaration of Moranville at ¶8. Ultimately, the amount actually awarded does not need to be decided
until final approval. Defendant reserves the right to object to any service award request that exceeds
\$10,000.

1 Agreement. Decl. Nordrehaug at ¶22.

2 **III. CASE BACKGROUND**

3 The description of the case and claims, along with the procedural history is set forth in the
4 Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and the
5 exchange of documents and information in connection with the Action over nearly two years which
6 permitted Class Counsel to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and 14.
7 The Parties participated in mediation on April 27, 2023 with Jeff Krivis, which after arms' length
8 negotiations both during and after the mediation, resulted in this Settlement. Decl. Nordrehaug, ¶12.

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

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 v. Ford Motor Co.*, 48 Cal.App.4th 1794,
21 1801 (1996); *Manual for 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).³ Preliminary approval is merely the prerequisite to giving notice so that "the proposed
26

27 ³ California courts look to federal authority on class actions. *Vasquez v. Superior Court*, 4 Cal.3d
28 800, 821 (1971). "It is well established that in the absence of relevant state precedents trial courts are

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

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

26 _____
27 urged to follow the procedures prescribed in Rule 23 of the Federal Rules of Civil Procedure for
28 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).

1 523, 528 (C.D. Cal. 2004).

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

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

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

16 This settlement is the result of extensive and hard-fought litigation as well as negotiations before
17 an experienced and well-respected mediator. Defendant has expressly denied and continues to deny any
18 wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiffs and Class
19 Counsel have determined that it is desirable and beneficial to the Class to resolve the Released Class
20 Claims of the Class in accordance with this Settlement.⁴

21
22 ⁴ The release applicable to the Class is appropriately tethered to allegations in the Action as the
23 "Released Class Claims" are defined as "all claims that were alleged, or reasonably could have been
24 alleged, based on the facts stated in the Operative Complaint during the Class Period, including failure
25 to pay minimum wages, straight time compensation, overtime compensation, doubletime compensation,
26 and interest thereon; failure to timely pay regular and final wages; the calculation of the regular rate of
27 pay; wages lost from time rounding and timekeeping; non-compliant (e.g., missed, short, late, and/or
28 interrupted) meal periods and rest periods; failure to provide meal periods; failure to authorize and
permit rest periods; the calculation and payment of meal period and rest period premiums; payment for
all hours worked, including off-the-clock work and uncompensated work time; wage statements and
paystubs, including wage statements and paystubs furnished or available in physical, electronic, or other
forms; failure to pay sick pay wages; failure to properly calculate sick pay wages; failure to keep
accurate records; failure to reimburse for all necessary business expenses; unfair business practices;

1 Class Counsel are experienced and qualified to evaluate the class claims, the defenses asserted,
2 and the risks and benefits of trial and settlement, and Class Counsel are particularly experienced in wage
3 and hour employment class actions, as Class Counsel has previously litigated and certified similar
4 claims against other employers. Decl. Nordrehaug at ¶31; Declaration of Sepideh Ardestani at ¶¶6-13.
5 The view of qualified and well-informed counsel that a class action settlement is fair, adequate, and
6 reasonable is entitled to significant weight. *See Kullar v. Foot Locker*, 168 Cal. App. 4th 116, 133
7 (2008) (the trial court "undoubtedly should continue to place reliance on the competence and integrity
8 of counsel, the involvement of a qualified mediator, and the paucity of objectors to the settlement.");
9 *Dunk*, 48 Cal. App. 4th at 1802.

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

19 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant is
20 Four Million Dollars (\$4,000,000). The Settlement is all-in with no reversion to Defendant and no need
21 to submit a claim form. Decl. Nordrehaug at ¶ 3.

22 Class Counsel has conducted a investigation into the facts of the class action. Formal and
23

24
25 recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time
26 penalties; statutory penalties and civil penalties; interest for claims for unpaid wages; and attorneys' fees
27 and costs; claims under the California Labor Code including sections 201, 201.3, 202, 203, 204, 210,
28 218, 218.5, 218.6, 223, 224, 226, 226.3, 226.7, 233, 246, 246.5, 248.5, 510, 512, 558, 1174, 1182.12,
1194, 1194.2, 1194.3, 1197, 1197.1, 1198, and 2802); the Wage Orders of the California Industrial
Welfare Commission; and California Business and Professions Code section 17200, et seq." (Agreement at ¶¶ 1.38 and 6.2.)

1 informal discovery was performed, which included the production of hundreds of pages of documents.
2 Class Counsel engaged in a thorough review and analysis of the relevant documents and data with the
3 assistance of an expert. 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. In addition, Class Counsel
6 previously negotiated settlements with other employers in actions involving nearly identical issues and
7 analogous defenses. Based on the foregoing data and their own independent investigation, evaluation
8 and experience, Class Counsel believes that the settlement with Defendant on the terms set forth in the
9 Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known
10 facts and circumstances, including the risk of significant delay, defenses asserted by Defendant, and
11 potential appellate issues. Decl. Nordrehaug at ¶ 14.

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

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

24 **2. The Settlement Has No "Obvious Deficiencies" and Falls Well Within** 25 **the Range for Approval**

26 The proposed Settlement herein has no "obvious deficiencies" and is well within the range of
27 possible approval. All Class Members will receive an opportunity to participate in the Settlement and
28 receive payment according to the same formula. (Agreement at ¶ 3.2(e).) Based upon 4,180 Class

1 Members who collectively worked 594,959 Workweeks (Agreement at ¶ 4.1), the Gross Settlement
2 Amount provides an average value of \$956 per Class Member and \$6.72 per Workweek and after
3 deductions the Net Settlement Amount provides an average recovery of \$590.11 per Class Member and
4 a recovery of \$4.14 per Workweek. Decl. Nordrehaug, ¶6.

5 The calculations to compensate for the amount due for the Class at the time of the mediation
6 were calculated by Berger Consulting, Plaintiffs' damage expert. As to the Class whose claims are at
7 issue in this Action, Plaintiffs used the expert to analyze the data and determine the potential unpaid
8 wages for the employees. The maximum potential damages were calculated to be \$110,617 for the
9 alleged unpaid wages due to alleged rounding of work time, \$33,335,557 for alleged meal period
10 damages based upon a 58% potential violation rate for shifts worked and after deducting the meals that
11 could validly be waived and deducting the meal period premiums paid by Defendant, \$6,087,509 for
12 alleged rest period damages based upon one violation per month, \$750,175 for alleged unreimbursed
13 business expenses for personal cell phone usage at \$5 per month. Decl. Nordrehaug, ¶6. As a result,
14 the total damage valuation was calculated that Defendant was subject to a maximum damage claim in
15 the amount of \$40,283,858. As to potential penalties, Plaintiffs calculated that potential waiting time
16 penalties were a maximum of \$16,848,452 and potential maximum wage statement penalties were \$
17 11,712,000.⁵ Defendant vigorously disputed Plaintiffs' calculations and exposure theories. Decl.
18 Nordrehaug, ¶6.

19 Consequently, the Gross Settlement Amount of \$4,000,000 represents 10% of the maximum
20 value of the alleged damages at issue in this case at the time this Settlement was negotiated.⁶ The above
21

22 ⁵ While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
23 226, at mediation Plaintiffs recognized that these claims were subject to additional, separate defenses
24 asserted by Defendant, including, a good faith dispute defense as to whether any premium wages for
25 meal or rest periods or other wages were owed given Defendants' position that Plaintiffs and Class
26 Members were properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584
27 (2010) ("There is no willful failure to pay wages if the employer and employee have a good faith dispute
28 as to whether and when the wages were due.").

⁶ Because the PAGA claim is not a class claim and primarily is paid to the State of California,
Plaintiffs have not included the PAGA claim in this discussion of the value of the class claims. The
PAGA claim is addressed in the Decl. Nordrehaug at ¶33.

1 maximum calculations should then be adjusted in consideration for both the risk of class certification
2 and the risk of establishing class-wide liability on all claims. Given the amount of the settlement as
3 compared to the potential value of claims in this case and the defenses asserted by Defendant, this
4 settlement is fair and reasonable.⁷ Clearly, the goal of this litigation has been met. Decl. Nordrehaug,
5 ¶6.

6 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
7 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
8 Defendant present serious threats to the claims of the Plaintiffs and the other Class Members.
9 Defendant asserted that Defendant's practices complied with all applicable Labor laws. Defendant
10 argued that Class Members were paid for all time worked and that all work time was properly recorded.
11 Defendants argued that any rounding was facially neutral and therefore lawful. *See's Candy Shops, Inc.*
12 *v. Sup. Ct.*, 210 Cal.App.4th 889, 901 (2012) (holding rounding policies are only lawful if they are
13 consistently applied and, on average, favor neither overpayment nor underpayment of wages).
14 Defendant contends that its meal and rest period policies fully complied with California law and
15 Defendant did not fail to provide the opportunity for legally required meal and rest breaks. Defendant
16 could argue that its payment of significant meal period premiums is evidence of lawful practices.
17 Defendant contends that there was no failure to pay for business expenses and any cell phone usage was
18 merely convenient and voluntary such that reimbursement was not legally required. Finally, Defendant
19 could argue that the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012),
20 weakened Plaintiffs' claims, on liability, value, and class certifiability as to the meal and rest period
21

22 ⁷ See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a
23 settlement where the settlement amount constituted approximately 25% of the estimated overtime
24 damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12
25 (N.D. Cal. 2015) (granting final approval where "the proposed Total Settlement Amount represents
26 approximately 10% of what class might have been awarded had they succeeded at trial."); *Dunleavy v.*
27 *Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000) (affirming approval of
28 a class settlement which represented "roughly one-sixth of the potential recovery".) See also *Viceral v.*
Mistras Grp., Inc., 2016 WL 5907869 (N.D. Cal. 2016) (approving wage and hour class action
settlement amounting to 8.1% of full value); *Ma v. Covidien Holding, Inc.*, 2014 WL 2472316, (C.D.
Cal. 2014) (approving wage and hour class action settlement worth "somewhere between 9% and 18%"
of maximum valuation).

claims. Defendant also argues that based on its facially lawful practices, Defendant acted in good faith and without willfulness, which if accepted would negate the claims for waiting time penalties and/or inaccurate wage statements. If successful, Defendant's defenses could eliminate or substantially reduce any recovery to the Class. While Plaintiffs believe that these defenses could be overcome, Defendant maintains these defenses have merit and therefore present a serious risk to recovery by the Class. Decl. Nordrehaug, ¶ 24.

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

After arm's length negotiations between experienced and informed counsel, the Parties recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of \$4,000,000. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

In light of the above-referenced uncertainty in the law, the risk, expense, complexity, and likely duration of further litigation likewise favors the settlement. Regardless of how this Court might have ruled on the merits of the legal issues, the losing party likely 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.'"

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

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

The relief provided in the Settlement will benefit all members of the Class. The Settlement does not grant preferential treatment to Plaintiffs or segments of the Class in any way. Payments to the Class

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

4 Plaintiffs will apply to the Court for Class Representative Service Payments in consideration
5 for their service and for the risks undertaken on behalf of the Class.⁸ (Agreement at ¶ 3.2(a).) Plaintiffs
6 performed their duties admirably by working with Class Counsel over the course of litigation. The
7 Declarations of the Plaintiffs are submitted herewith in support. Decl. Nordrehaug at ¶27. At this stage,
8 the requested service award of \$30,000 is within the accepted range of awards for purposes of
9 preliminary approval given the mitigating factors. *See e.g. Louie v. Kaiser Foundation Health Plan,*
10 *Inc.*, 2008 WL 4473183, *7 (S.D.Cal. Oct. 06, 2008) (awarding \$25,000 service award to each of six
11 plaintiffs in overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D.Cal. Jan.
12 27 2007) (awarding \$25,000 service award in overtime class action and a pool of \$100,000 in
13 enhancements). As explained in *Glass*, service awards are routinely awarded to class representatives
14 to compensate the employees for the time and effort expended on the case, for the risk of litigation, for
15 the fear of suing an employer and retaliation there from, and to serve as an incentive to vindicate the
16 statutory rights of all employees. 2007 WL 221862 at *16-17.

17 **4. The Stage Of The Proceedings Are Sufficiently Advanced To Permit** 18 **Preliminary Approval Of The Settlement**

19 The stage of the proceedings at which this Settlement was reached also militates in favor of
20 preliminary approval and ultimately, final approval of the Settlement. Class Counsel has conducted a
21 thorough investigation into the facts of the class action. Class Counsel began investigating the Class
22 Members' claims before the Action were filed, and during the course of litigation, Class Counsel
23 performed formal and informal discovery to obtain necessary information. Class Counsel conducted
24 a review and analysis of the relevant documents and data. Class Counsel was also experienced with the
25 claims at issue here, as Class Counsel previously litigated and settled similar claims in other actions.

26
27 ⁸ The Plaintiffs understand that the not to exceed amount is higher than normal, however, there are
28 mitigating factors justifying the increased not to exceed amount. See Declaration of Phan at ¶15;
Declaration of Moranville at ¶8.

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

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

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

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

17 All individuals who were employed by Defendant in California and classified as a
18 non-exempt employee at any time during the Class Period.

19 (Agreement at ¶ 1.5.)

20 The Class Period is February 8, 2018 through July 27, 2023. (Agreement at ¶ 1.13.)

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

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

25 Code of Civil Procedure Section 382 authorizes class actions “when the question is one
26 of a common or general interest, of many persons, or when the parties are numerous, and
27 it is impracticable to bring them all before the court...” The party seeking certification
28 has the burden to establish the existence of both an ascertainable class and a well-
defined community of interest among class members. (*citations omitted*). The
“community of interest” requirement embodies three factors: (1) predominant common

1 questions of law or fact; (2) class representatives with claims or defenses typical of the
2 class; and (3) class representatives who can adequately represent the class.

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

4 While Defendant reserves all rights to dispute that the Plaintiffs can satisfy these requirements,
5 the Parties agree that Defendant will not dispute that these requirements may be satisfied in this case
6 for purposes of settlement only and therefore, the proposed Class should be certified for purposes of
7 settlement only. (Agreement at ¶ 2.7.)

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

9 Plaintiffs bring this action on behalf of a Class of non-exempt employees of Defendant during
10 the Class Period. Plaintiffs asserts that all of these individuals are ascertainable because the class
11 members can readily be determined through examination of Defendant's files. Given that the Class
12 consists of 4,180 members, Plaintiffs maintain that numerosity is clearly satisfied. *See Bowles v.*
13 *Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose v. City of*
14 *Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.)
15 Here, Plaintiffs assert that the 4,180 current and former employees that comprise the Class can be
16 identified based on Defendant's records and are sufficiently numerous for class certification. Decl.
17 Nordrehaug at ¶30.

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

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

24 Commonality exists if there is a predominant common legal question regarding how an
25 employer's policies impact its employees. *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524,
26 1536 (2008) ("[T]he common legal question remains the overall impact of Diva's policies on its
27 drivers.") Whether the plaintiff is likely to prevail on their theory of recovery is irrelevant at the
28

1 certification stage since the question is “essentially a procedural one that does not ask whether an action
2 is legally or factually meritorious.” *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2003).

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

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

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

20 In this Action, Plaintiffs contend that the typicality requirement is fully satisfied. Plaintiffs, like
21 every other member of the Class, were employed by Defendant as non-exempt employees, and, like
22 every other member of the Class, were subject to the same employment practices. Plaintiffs, like every
23 other member of the Class, also claim owed compensation as a result of the Defendant’s uniform
24 company policies and practices. Thus, the claims of Plaintiffs and the members of the Class arise from
25 the same course of conduct by Defendant, involve the same issues, and are based on the same legal
26 theories. Decl. Nordrehaug at ¶30. For purposes of settlement, Plaintiffs assert that the typicality
27
28

1 requirement is met as to the common issues presented in this case. Defendant does not oppose a finding
2 of typicality for purposes of this Settlement only.

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

4 Plaintiffs contend that the Class Members are adequately represented here because Plaintiff and
5 representing counsel (a) do not have any conflicts of interest with other class members, and (b) will
6 prosecute the case vigorously on behalf of the class. *Hanlon*, 150 F.3d at 1020. This requirement is
7 met here. First, Plaintiffs are well aware of their duties as the representatives of the Class and have
8 actively participated in the prosecution of this case to date. Plaintiffs effectively communicated with
9 Class Counsel, provided documents and information to Class Counsel, appear for deposition, and
10 participated in the investigation and resolution of the Action. The personal involvement of the Plaintiffs
11 was essential to the prosecution of the Action and the monetary settlement reached. Second, Plaintiffs
12 retained competent counsel who are experienced in employment class actions and who have no
13 conflicts. Decl. Nordrehaug at ¶ 31; Declaration of Sepideh Ardestani at ¶¶ 6-13. Third, there is no
14 antagonism between the interests of the Plaintiffs and those of the Class. Both the Plaintiffs and the
15 Class Members seek monetary relief under the same set of facts and legal theories. Under such
16 circumstances, there can be no conflicts of interest, and adequacy of representation is satisfied. *Reaves*
17 *v. Ketoro, Inc.*, 2020 U.S. Dist. Lexis 167926, *23 (C.D. Cal. 2020). Defendants dispute that the
18 adequacy requirement is satisfied but will not oppose such a finding for purposes of this Settlement
19 only.

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

21 To certify a class, the Court must also determine that a class action is superior to other available
22 methods for the fair and efficient adjudication of the controversy. “Where classwide litigation of
23 common issues will reduce litigation costs and promote greater efficiency, a class action may be
24 superior to other methods of litigation.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir.
25 1996). As courts have previously observed:

26 Absent class treatment, each individual plaintiff would present in separate, duplicative
27 proceedings the same or essentially the same arguments and evidence, including expert
28 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

1 anyone, including defendants, to force multiple trials to hear the same evidence and
2 decide the same issues.”

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

4 Here, Plaintiffs contend that a class action is the superior mechanism for resolution of the claims
5 as pled by the Plaintiffs. While Defendant disputes that class treatment is superior, Defendant does not
6 dispute a finding of superiority in this action for purposes of this Settlement only.

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

8 The Court has broad discretion in approving a practical notice program. The Parties have agreed
9 upon procedures by which the Class Members will be provided with written notice of the Settlement
10 similar to that approved and utilized in hundreds of class action settlements. In accordance with the
11 Agreement, Defendant will provide to the Administrator a confidential electronic spreadsheet
12 containing the Class Data. (Agreement at ¶ 4.2.) Within 14 days after receiving the Class Data, the
13 Administrator will mail the Class Notice to all Class Members via first-class U.S. Mail using the most
14 current mailing address information available. (Agreement at ¶ 8.4(b).)

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

25 The Class Notice will state that the Class Members shall have sixty (60) days from the date that
26 the Class Notice is mailed to them (the “Response Deadline”) to request exclusion (opt-out) or to
27 submit a written objection. (Agreement at ¶¶ 1.42, 8.5, 8.7.) Class Members shall be given the
28 opportunity to object to the Settlement and/or requests for attorneys’ fees and expenses and to appear

1 at the Final Approval Hearing. (Agreement at ¶ 8.7.) Class Members who do not submit a timely and
2 proper request to opt-out will automatically receive a payment of their Individual Class Payment. This
3 notice program was designed to meaningfully reach the Class Members and it advises them of all
4 pertinent information concerning the Settlement. Decl. Nordrehaug at ¶32. The mailing and
5 distribution of the Class Notice satisfies the requirements of due process and is the best notice
6 practicable under the circumstances and complies with Rules of Court 3.766 and 3.769(f).

7
8 **VII. CONCLUSION**

9 Plaintiffs respectfully request that the Court preliminarily approve the proposed settlement and
10 sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the final
11 approval hearing for the proposed date of May 24, 2024, which is a date that is at least one hundred
12 twenty (120) days from the date of Preliminary Approval.

13 Dated: December 4, 2023

14 **BLUMENTHAL NORDREHAUG BHOWMIK**
15 **DE BLOUW LLP**
16 By: /s/ Kyle Nordrehaug
17 Kyle R. Nordrehaug, Esq.
18 Attorney for Plaintiffs
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