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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

LINDSEY SUMNICHT, ZOLA STAMPER, and FARRAH ALIZADEH, individuals, on behalf of themselves and on behalf of all persons similarly situated, Plaintiffs, vs. AMN SERVICES, LLC, a Limited Liability Company; and DOES 1 through 50, inclusive, Defendants.	CASE NO.: **22CV397191** **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT** Hearing Date: January 7, 2026 Hearing Time: 1:30 p.m. Judge: Hon. Theodore C. Zayner Dept.: 19 Action Filed: April 22, 2022 Trial Date: Not set

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I. INTRODUCTION

Plaintiffs Lindsey Sumnicht, Zola Stamper, and Farrah Alizadeh ("Plaintiffs") move for an order: (1) preliminarily approving the proposed settlement of this class action with Defendant AMN Services, LLC ("Defendant"); (2) for settlement purposes only, conditionally certifying the Class, which is comprised of "all of Defendant's non-exempt employees who were assigned to work at any facility in California at any time during the Class Period", i.e., July 8, 2021 through September 17, 2025; (3) provisionally appointing Plaintiffs as the representatives of the Class; (4) provisionally appointing Blumenthal Nordrehaug Bhowmik De Blouw LLP and Haines Law Group APC as Class Counsel for the Class; (5) approving the form and method for providing notice to the Class of the proposed settlement; (6) directing that notice of the proposed settlement be given to the Class; (7) appointing Apex Class Action as the Administrator; and (8) scheduling a final approval hearing date, proposed for June 3, 2026, to consider the Plaintiffs' motion for final approval of the settlement and for approval of attorneys' fees, expenses and the service awards. Plaintiffs and Defendant have reached a full and final settlement of the above-captioned action, which is set forth in the Class Action and PAGA Settlement Agreement (the "Agreement") filed concurrently with the Court.[1] A copy of the fully executed Agreement is attached as Exhibit #1 to the Declaration of Kyle Nordrehaug ("Decl. Nordrehaug"), served and filed herewith, and the form of the Agreement is based on the Los Angeles Superior Court model form for class and PAGA settlements.

As consideration for this Settlement, the Gross Settlement Amount is Four Million Dollars ($4,000,000) 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 Gross Settlement Amount includes all payments of Individual Class Payments to the Participating Class Members, the Administration Expenses Payment to the Administrator, the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment to Class Counsel, the Class Representative Service Payments to Plaintiffs, and the PAGA Penalties payment to the California Labor and Workforce Development Agency (the "LWDA") and the

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

Aggrieved Employees. The Gross Settlement Amount does not include the employer's share of payroll taxes which will be separately paid by Defendant. 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:

$4,000,000 (Gross Settlement Amount)
- $30,000 (Plaintiffs' proposed service awards - not to exceed $10,000 each)
- $35,000 (Class Counsel Litigation Expenses - not to exceed amount)
- $1,333,333 (Class Counsel Fees Payment - not to exceed one-third of settlement)
- $100,000 (PAGA Penalties - 75% to LWDA / 25% to Aggrieved Employees)
- $75,000 (Administration Expenses Payment - not to exceed amount)

$2,436,667 (Net Settlement Amount)

Based upon 13,802 Class Members who collectively worked 414,949 Workweeks (Declaration of Anthony Sbardellati), the Gross Settlement Amount provides a value of $289.81 per Class Member and $9.63 per Workweek and, after deductions, the Net Settlement Amount provides an average recovery of $175.81 per Class Member and $5.94 per Workweek. Decl. Nordrehaug at ¶6.

On June 17, 2025, the Parties participated in an all-day mediation session presided over by Monique Ngo-Bonnici, Esq., a respected and experienced mediator of wage and hour class actions. Following this mediation, the Parties reached an agreement to settle the Action when both sides accepted the mediator's proposal. 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 Four Million Dollars ($4,000,000). (Agreement at ¶ 1.22.) Under the Settlement, the Gross Settlement Amount consists of the following elements: (i) all Individual Class Payments and Individual PAGA Payments; (ii) the LWDA PAGA Payment; (iii) the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment; (iv) the Class Representative Service Payments; and (v) the Administration Expenses Payment. (Agreement at ¶ 1.22.) The Gross Settlement Amount does not include Defendant's share of payroll taxes. (Agreement at ¶ 3.1.) The Gross Settlement Amount shall be all-in with no reversion to Defendant. (Agreement at ¶ 3.1.) Decl. Nordrehaug at ¶15.

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

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

Class Members may choose to opt-out of the Settlement by following the directions in the Class Notice. (Agreement at ¶ 8.5, Ex. A.) All Class Members who do not "opt out" will be deemed Participating Class Members and will be bound by the Settlement and will be entitled to receive an Individual Class Payment. (Agreement at ¶ 8.5(c).) All Aggrieved Employees still will receive an Individual PAGA Payment and will release the Released PAGA Claims regardless of any request for exclusion from the Class. (Agreement at ¶¶ 6.3 and 8.5(d)) Finally, the Class Notice will advise the Class Members of their right to object to the Settlement and/or dispute their Workweeks. (Agreement at ¶¶ 8.6 and 8.7, Ex. A.) Decl. Nordrehaug at ¶18.

A Participating Class Member must cash the check for his or her Individual Class Payment (and, if applicable, Individual PAGA Payment) within 180 days after it is mailed. (Agreement at ¶ 5.2.) Any settlement checks not cashed within 180 days will be voided and any funds represented by such checks will be allocated to a Court-approved nonprofit organization or foundation consistent with Code of Civil Procedure Section 384(b) ("Cy Pres Recipient"). The Parties have proposed Greg E. Knoll Justice Gap Fund as the the Cy Pres Recipient of this Settlement to receive the uncashed funds. (Agreement at ¶ 5.4.) Decl. Nordrehaug at ¶19.

Subject to Court approval, the Parties have agreed on Apex Class Action LLC to administer the settlement in this action (the "Administrator"). (Agreement at ¶ 1.2.) The Administrator will be paid for settlement administration in an amount not to exceed $75,000. (Agreement at ¶ 3.2(c).) Decl. Nordrehaug at ¶20. A Declaration from Apex Class Action is submitted herewith.

Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not to exceed one-third of the Gross Settlement Amount as the Class Counsel Fees Payment. (Agreement at ¶ 3.2(b).) Class Counsel will also be allowed to apply for an award of Class Counsel Litigation Expenses Payment in an amount not to exceed $35,000. (Agreement at ¶ 3.2(b).) Subject to Court approval, the Agreement provides for a payment of no more than $10,000 each to Plaintiffs as their Class Representative Service Payments. (Agreement at ¶ 3.2(a).) Decl. Nordrehaug at ¶21.

Subject to Court approval, $100,000 will be paid from the Gross Settlement Amount in settlement of Plaintiffs' claim for civil penalties under the California Labor Code Private Attorneys General Act ("PAGA"), Cal. Labor Code Section 2698, *et seq.* Pursuant to the express requirements of Labor Code § 2699(i), the PAGA Penalties payment shall be allocated as follows: 75% ($75,000) shall be allocated to the LWDA as its share of the civil penalties and 25% ($25,000) allocated to the Aggrieved Employees and distributed as Individual PAGA Payments based on the number of their respective PAGA Pay Periods. (Agreement at ¶ 3.2(d).) As set forth in the accompanying proof of service, the LWDA has been served with this motion and the Agreement. Decl. Nordrehaug at ¶22.

III. CASE BACKGROUND

The description of the case and claims, along with the procedural history, is set forth in the Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation, fulsome formal discovery, and an informal exchange of documents, information, and data in connection with the Action which permitted Class Counsel to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and 14. The Parties participated in private mediation on June 17, 2025 with

Monique Ngo-Bonnici, Esq., which after arm's length negotiations, resulted in this Settlement. Decl. Nordrehaug, ¶12.

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

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

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

The primary question presented on an application for preliminary approval of a proposed class action settlement is whether the proposed settlement is "within the range of possible approval." *Manual for Complex Litigation*, Second §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir. 1982).[2] Preliminary approval is merely the prerequisite to giving notice so that "the proposed settlement... may be submitted to members of the prospective Class for their acceptance or rejection." *Sayaman v. Baxter Healthcare Corp.*, 2010 U.S. Dist. LEXIS 151997, *3 (C.D. Cal. 2010). There is

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

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

A. <u>The Role Of The Court In Preliminary Approval Of A Class Action Settlement.</u>

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

In considering a potential settlement for preliminary approval purposes, the trial court need not reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute, and need not engage in a trial on the merits. *Wershba*, *supra*, 91 Cal.App.4th at 239-40; *Dunk*, *supra*, 48 Cal.App. 4th at 1807. The Ninth Circuit explains, "the very essence of a settlement is compromise, 'a yielding of absolutes and an abandoning of highest hopes.'" *Officers for Justice*, 688 F.2d at 624. The question whether a proposed settlement is fair, reasonable and adequate necessarily requires a judgment and evaluation by the attorneys for the parties based upon a comparison of "'the terms of the compromise with the likely rewards of litigation.'" *Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir. 1982), *cert. denied* 464 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)). Thus, when analyzing the settlement, the amount is "not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." *Officers for Justice*, 688 F.2d at 625, 628.

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

B. Factors To Be Considered In Granting Preliminarily Approval.

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

1. The Settlement Is The Product Of Serious, Informed And Arm's Length Negotiations By Experienced Counsel.

The Settlement is the result of extensive and hard-fought litigation as well as negotiations before an experienced and well-respected mediator, who ultimately proposed the settlement amount all the Parties separately agreed to accept. Defendant has expressly denied and continues to deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiffs and Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released Class Claims in accordance with the Settlement. The release applicable to the Class is tethered to allegations in the Action: “all claims as pled in the Operative Complaint including claims that reasonably could have been alleged based on the facts stated in the Operative Complaint that occurred during the Class Period”. (Agreement at ¶ 1.39.)

Class Counsel are experienced and qualified to evaluate the class claims, the defenses asserted, and the risks and benefits of trial and settlement, and Class Counsel are particularly experienced in wage and hour employment class actions, as Class Counsel has previously litigated and certified similar claims against other employers. Decl. Nordrehaug at ¶31; Declaration of Paul Haines at ¶¶ 2-11. The view of qualified and well-informed counsel that a class action settlement is fair, adequate, and reasonable is entitled to significant weight. *See Kullar v. Foot Locker*, 168 Cal. App. 4th 116, 133 (2008) (the trial court "undoubtedly should continue to place reliance on the competence and integrity of counsel, the involvement of a qualified mediator, and the paucity of objectors to the settlement."); *Dunk*, 48 Cal. App. 4th at 1802.

Over the course of several years of litigation, the Parties engaged in motion practice, extensive formal discovery, and informal discovery before the Parties agreed to seek a resolution of their dispute through an arms-length mediation session with Monique Ngo-Bonnici, a respected and experienced mediator of wage and hour class actions. In preparation for the mediation, Defendant provided Class Counsel with additional information on an informal basis, beyond the information and documents provided in formal discovery, including the Class payroll data, timekeeping data, meal waiver data, meal and rest period attestation data, data points derived from the various data files, all relevant policies, all documents pertaining to the plaintiffs, and all relevant handbooks. Plaintiffs analyzed the data files with the assistance of a damages expert, Berger Consulting, and prepared and submitted a mediation brief and damage valuation to the Mediator. Following the all-day mediation, the Parties agreed to settle the action on the terms proposed by the mediator following a day of hard fought negotiations, and their agreement was memorialized in the form of a Memorandum of Understanding. The final terms of the Settlement were negotiated and set forth in the Agreement now presented for this Court’s approval. Decl. Nordrehaug at ¶ 5. Importantly, Plaintiffs and Class Counsel believe that this Settlement is fair, reasonable and adequate.

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

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

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

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

The proposed Settlement has no "obvious deficiencies" and is well within the range of possible approval. All Class Members will receive an opportunity to participate in the Settlement and receive payment according to the same formula. (Agreement at ¶ 3.2(e).) Based upon 13,802 Class Members who collectively worked 414,949 Workweeks (Declaration of Anthony Sbardellati), the Gross

Settlement Amount provides a value of $289.81 per Class Member and $9.63 per Workweek and, after deductions, the Net Settlement Amount provides an average recovery of $175.81 per Class Member and $5.94 per Workweek. Decl. Nordrehaug, ¶6.

The calculations to compensate for the amount due to the Class Members at the time the Settlement was negotiated were calculated by Plaintiffs' expert, Berger Consulting, in advance of mediation. Class Counsel analyzed the data for putative class members and determined the potential maximum damages for the class claims. For the Class, the maximum potential damages for alleged off-the-clock work at 10 minutes per week was $3,543,794, the maximum potential damages for the alleged miscalculation of the regular rate when paying meal and rest premiums and sick pay is $118,777, the maximum potential damages for alleged meal period violations were estimated to be $6,424,353 based upon a 42% violation rate observed in the time records and after deduction of meal period premiums paid by Defendant and a reduction of 75% of the violations which were subject to health care worker meal waivers under *Gerard v. Orange Coast Mem'l Med. Ctr.*, 6 Cal. 5th 443 (2018) and on-duty meal agreements, the maximum potential damages for alleged rest period violations were estimated to be $10,373,831 based upon the informed assumption that the employees missed 1 rest break every other week and after deduction of rest period premiums paid, and the maximum potential damages for the alleged failure to reimburse business expenses were calculated to be $599,755 based upon $5 per month. As to the overtime claim based upon the alleged miscalculation of the regular rate, (1) the exclusion of the per diems and other compensation from the regular rate arguably resulted in $10,179,646 in alleged underpaid overtime damages, but (2) the existence of overpayments resulted in offsets that reduced the maximum overtime exposure to $3,990,956, and (3) Defendant argued that there was no overtime exposure, because the per diems were properly excluded from the regular rate under 29 U.S.C. § 207(e)(2), in which case the offsets would have exceeded the alleged overtime underpayment resulting in $0 overtime exposure. In total, the soaking wet damages for the Class - if Plaintiffs proved all of their claims and obtained the maximum possible damages - were calculated to have a maximum potential total value of $25,051,466. In addition, Plaintiffs calculated that the maximum value of the potential waiting time penalties were $190,119,899, depending on the predicate violation, and the maximum value of the potential wage statement penalties were $30,613,050.[3] Decl. Nordrehaug, ¶6.

Throughout the course of the litigation, Defendant presented substantial evidence and strong legal analysis undermining Plaintiffs' claims and vigorously disputed Plaintiffs' calculations. In fact, Defendant's analysis revealed a very high risk that the maximum potential recovery was exponentially smaller than the estimates calculated by Berger Consulting. Decl. Nordrehaug, ¶6.

First, all of Plaintiffs' claims premised on the alleged miscalculation of the regular rate were based upon their allegation that per diem payments made to the employees were improperly excluded from the regular rate. For context, Defendant employs healthcare professionals for short-term assignments, nearly all of whom travel away from their home to work, often from another state. Defendant provides eligible employees with per diem payments to reimburse them for the housing, meals, and incidental expenses incurred while they are away from their home and working in furtherance of the company's interests. Defendant explained that the per diem payments are provided to reimburse the employees for duplicate expenses they incur to live in their temporary assignment location and to maintain their home residence. Defendant argued that those payments are a reasonable estimate of these duplicated living expenses because they are based on the General Services Administration's CONUS guidelines to determine stipend rates, which are presumptively valid. See 29 C.F.R. § 778.217(c). Decl. Nordrehaug, ¶ 24(A).

Defendant effectively argued that it operated within the bounds of section 207(e)(2) of the FLSA when it excluded the stipends from the regular rate, as reasonable estimates of the meals, incidentals, and lodging expenses incurred by traveling clinicians on behalf of Defendant. Although the Ninth Circuit determined that Defendant's per diem payments tendered under a since lapsed program which

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[3] While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and 226, at mediation Plaintiffs recognized that these claims were subject to additional, separate defenses asserted by Defendant, including but not limited to, a good-faith dispute defense as to whether any 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 a good faith dispute as to whether and when the wages were due.").

existed between 2013 and 2021 were improperly excluded from the regular rate after conducting a factual inquiry into the "function" of the payments, *Clarke v. AMN Services, LLC*, 987 F.3d 848, 853-54 (9th Cir. 2021), Defendant ceased all of the practices relied upon by the Ninth Circuit in reaching that decision shortly after it was rendered. Specifically, the *Clarke* Court held that when assessing the propriety of excluding per diems from the regular rate, courts must consider a "combination of factors" on a case-specific basis, which included: (1) the reasons why an employee missed a scheduled shift and whether they nevertheless (a) incurred expenses on behalf of Defendant on that day but (b) were not provided with a per diem payment; (2) whether employees could offset a per diem deduction resulting from missing a scheduled shift by working an unscheduled shift, a practice referred to as "banking;" and (3) whether per diem reimbursements were also provided to employees who did not travel away from their homes. *Id.* at 857-58. Decl. Nordrehaug, ¶ 24(B).

Critically, Defendant's evidence demonstrated that none of the factors that existed in *Clarke* remain, because of changes made by Defendant following that decision. Specifically, Defendant demonstrated that it only provides per diems to clinicians who are traveling away from their tax homes; reduces per diems on a daily basis-not a shift or hourly basis; does not permit the banking of shifts or hours to offset a future adjustment; and only adjusts per diems when it knows a clinician did not incur expenses in furtherance of its interests (e.g., because the clinician returned to his or her tax home or worked for a competitor). Defendant convincingly explained that it successfully changed its practices to avoid the very allegations made by Plaintiffs here, and Defendant persuasively argued that Plaintiffs would not be able to establish liability on any of their regular rate claims. Decl. Nordrehaug, ¶ 24(C).

Second, regarding Plaintiffs' rest break claim, Defendant persuasively argued that its written rest break policy was lawful, that the company paid rest break premiums whenever a non-compliant rest break was reported, and no evidence of uncompensated rest break violations even existed. In fact, Defendant produced attestation data showing that - when asked - nearly all of the employees attested to the fact that they were provided the opportunity to take all of the rest breaks they were entitled to in nearly every shift they worked. Decl. Nordrehaug, ¶ 24(D).

Third, regarding Plaintiffs' meal period claim, Defendant presented substantial evidence that called into question the validity of Plaintiffs' claims, and winnowed any exposure on them to a relatively minimal amount (assuming class certification could even be obtained, which was also called into serious doubt by Defendant's evidence). Specifically, Defendant presented compelling and uncontestable evidence that its written policies were compliant for the entire statutory period. And, the policy instructs the clinicians to report any time a meal break is not provided or "otherwise discouraged" and provides a phone number to make that report. As noted above, the overwhelming majority of Defendant's employees signed second meal waivers, which reflects the reality that most nurses simply want to go home instead of sitting around unpaid for thirty minutes toward the end of their lengthy shifts. In fact, Defendant produced meal break attestation data, which proved that most of the company's employees attested to the fact that they were provided with the opportunity to take all required meals, even when their time punches reflected a voluntarily missed meal. Defendant further demonstrated that in the uncommon instance when a meal was not taken, not waived, and no attestation existed, Defendant paid meal premiums. As Defendant explained, and as corroborated by the data files Defendant produced in advance of the mediation, overlaid analysis of Defendant's (1) time punch data, (2) meal waiver data, (3) meal attestation data, and (4) payroll data including premium payments demonstrated that less than 6% of pay periods contained even a single, facially non-compliant meal - meaning that the evidence demonstrated that Defendant complied with its meal period obligations in nearly every shift worked by the employees. And, Defendant argued, there was no evidence whatsoever demonstrating that even the relatively small number of shifts with facially non-compliant meal periods were actually due to the fact that a meal period was not provided, i.e., as opposed to voluntarily skipped, a point which Plaintiffs were unable to contest. Decl. Nordrehaug, ¶ 24(E).

Fourth, Defendant presented compelling arguments and evidence in opposition to Plaintiffs' expense reimbursement claim, which was premised on their allegation that Defendant's employees were required to use their personal cell phones for work related purposes and not reimbursed. But the clinicians employed by Defendant are nurses who provide direct patient care within healthcare facilities and do not need their cell phones to perform any aspect of their jobs. Defendant argued that this claim fails for that reason alone. Moreover, Defendant argued that the clinicians are provided with access to telephones, computers, scanners, and fax machines at the healthcare facilities where they are assigned, which they are permitted to use as needed for work. In other words, Defendant argued that there is no requirement that clinicians use their personal cell phones as other, free methods of communication were at all times available to them and that Plaintiffs would be unable to prove the third element of their claim, that the use of their personal cell phones was "both reasonable and necessary." *Swamy v. Title Source, Inc.*, 2018 WL 1586139, at *3 (N.D. Cal. 2018); Cal. Lab. Code § 2802. Whether clinicians chose to use their personal cell phones out of convenience simply does not render that use a necessary and reasonable expense. *Herrera v. Zumiez, Inc.*, 953 F.3d 1063, 1077 (9th Cir. 2020). Decl. Nordrehaug, ¶ 24(F).

Lastly, Defendant presented exceptionally strong legal arguments which, if proven, would negate liability on all of Plaintiffs' derivative claims. Plaintiffs alleged a derivative violation of Labor Code section 204 for failure to make timely payments. As Defendant argued, the case law overwhelmingly agrees that section 204 only regulates the timing of wages, i.e., that an employer establish regular pay days at least twice per month. *See's Candy Shops, Inc. v. Superior Court*, 210 Cal. App. 4th 889, 904-905 (2012) (section 204 deals with the timing of wages and not whether correct wages were paid); *Chiarito v. Home Depot, U.S.A., Inc.*, 2023 WL 6151721, at *3 (C.D. Cal. 2023) (holding that alleged unpaid wages is insufficient to establish a violation of section 204 because "section 204 provides the right to timely wages, not a specific amount or calculation of wages."); *Barragan v. Home Depot U.S.A., Inc.*, 2021 WL 2828577, at *2 (S.D. Cal. 2021), on reconsideration in part, 2021 WL 3634851 (S.D. Cal. Aug. 17, 2021) (dismissing plaintiff's claim under section 204 because it only provides a right to timely wages and not a specific amount or calculation); *Carter v. Jai-Put Enter. Inc.*, 2020 WL 3545094, at *10 (N.D. Cal. 2020) (denying summary judgment as to section 204 because a violation of section 204 cannot be premised on underpaid wages). Defendant demonstrated, convincingly, that it pays weekly wages in full compliance with the requirements of Labor Code section 204. Decl. Nordrehaug, ¶ 24(G).

Plaintiffs' wage statement claim was also purely derivative of their substantive allegations. As Defendant convincingly argued, the company's "good faith belief that it has provided [employees] with adequate wage statements precludes an award of penalties under section 226[(e)(1)]" under the California Supreme Court's recent unanimous decision in *Naranjo*. See *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1087 (2024). Decl. Nordrehaug, ¶ 24(H).

Defendant also presented compelling evidence and argument in support of its position that Plaintiffs' waiting time penalties would likely be defeated in the litigation, if a settlement was not reached. First, Defendant argued that Plaintiffs would be unable to establish that any failure to pay final wages was willful. See *Diaz v. Grill Concepts Servs., Inc.*, 23 Cal. App. 5th 859, 868 (2018) ("[A]n employer's failure to pay is not willful if that failure is due to (1) uncertainty in the law, (2) representations by the taxing authority that no further payment was required, or (3) the employer's 'good faith mistaken belief that wages are not owed' grounded in a 'good faith dispute,' which exists when the 'employer presents a defense, based in law or fact which, if successful, would preclude any recovery on the part of the employee.'" (citations omitted)). Second, Defendant is nonetheless entitled to a good faith defense. See, e.g., 8 CCR § 13520 (stating that "a good faith dispute that any wages are due will preclude imposition of waiting time penalties under Section 203" and defining a "good faith dispute" as one where "an employer presents a defense, based in law or fact which, if successful, would preclude any recover[y] on the part of the employee"); *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1202 (2008) (relying on the definition of "willful" in 8 CCR § 13520 to find that an employee was not entitled to section 203 penalties where the employer had a mistaken, but good faith belief that a wage order did not apply to its employees). Setting that aside, pursuant to Labor Code section 201.3 and as a temporary services provider, Defendant persuasively argued that it could theoretically owe waiting time penalties only to the relatively few employees who were discharged by the company or who resigned during the statutory period, and who were not timely paid all wages owed. Cal. Lab. Code § 201.3(b)(4), (b)(5). This is because the mere ending of a temporary assignment for a temporary services provider like Defendant, without more, simply does not trigger the imposition of waiting time penalties. See, e.g., *Young v. RemX Specialty Staffing*, 91 Cal. App. 5th 427, 435 (2023) ("section 201.3(b)(4) applies when a temporary services employer discharges an employee from employment with the temporary services employer, not when such an employer terminates an employee from a particular work assignment."); *Elliot v. Spherion Pac. Work, LLC*, 572 F. Supp. 2d 1169, 1175 (C.D. Cal. 2008), aff'd 368 Fed. Appx. 761 (9th Cir. 2010) (holding that temporary employees whose assignments end with their employer are not entitled to section 203 penalties because such temporary employees are not "discharged" within the meaning of section 201); *Willner v. Manpower Inc.*, 35 F. Supp. 3d 1116, 1127

(N.D. Cal. 2014) (same). Moreover, Defendant presented compelling evidence that its policy for employees working in California is to pay final wages within 72 hours if an employee quits without notice or immediately if the employee is terminated by Defendant. Taken together, Defendant persuasively argued that there was a substantial risk that Plaintiffs would recover nothing on this claim. Decl. Nordrehaug, ¶ 24(I).

Here, the Gross Settlement Amount represents more than 15.9% 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, which Defendant's comprehensive evidence and compelling legal arguments placed in serious and deep doubt.[4] 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.[5] Clearly, the goal of this litigation has been met. Decl. Nordrehaug, ¶6.

Separate and apart from the merits of Plaintiffs' claims and Defendant's defenses, all of the settlement Class Members are bound by arbitration agreements containing class action waivers.[6] In

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[4] 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.

[5] *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).

[6] The enforceability of the arbitration agreements binding the Class Members is presently on appeal in the Ninth Circuit in the matter captioned *Pappas v. AMN Healthcare Services, Inc., et al.*, Case No. 25-473. The District Court Order from which that appeal arose, denying a motion to compel arbitration, was based in part on a finding of procedural unconscionability premised on the specific circumstances

earlier proceedings before this Court, Defendant moved to compel arbitration of Plaintiff Sumnicht's individual claims and prevailed, resulting in an order directing the parties to arbitration. During the pendency of that arbitration, the parties stipulated to return this matter to the litigation forum on a PAGA-only basis. During the negotiations that culminated in the Settlement, the parties agreed to a larger settlement amount in exchange for a release of class claims for the PAGA Period only, which will provide a significantly greater monetary recovery the Class Members than a PAGA settlement would have. In light of the arbitration agreements, it is highly unlikely that the vast majority of the Class Members would have ever pursued the claims at issue in this case, which further demonstrates the fairness and reasonableness of the Settlement. Decl. Nordrehaug, ¶ 24(J).

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, addressed in detail above, presented 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 and that there was no miscalculation of the regular rate. Defendant contends that its meal and rest period policies and practices provide Class Members with meal and rest periods and that the payment of significant meal premiums is evidence of Defendant's legally compliant practices. As to expense reimbursement, Defendant maintains that it did not fail to provide reimbursement for necessary business expenses because, among other things, the alleged expenses were convenient and voluntary, and therefore not were required expenses giving rise to reimbursement. Defendant could argue that the decisions in *Brinker v. Superior Court,* 53 Cal. 4th 1004 (2012), *Lockheed Martin Corp. v. Superior Ct.*, 29 Cal. 4th 1096, 1108 (2003), and *Salazar v. See's Candy Shops Inc.*, 64 Cal.App.5th 85 (2021), weakened Plaintiffs' claims in terms of liability and value, and preclude claims from proceeding on a class or representative basis. Defendant also maintains that a good faith dispute and absence of willfulness would negate the claims for waiting time penalties and/or failure to provide accurate itemized wage statements. See e.g. *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065 (2024) ("if an employer reasonably and in good faith believed it was providing a complete and accurate

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surrounding the execution of the arbitration agreement by the Pappas plaintiffs.

wage statement in compliance with the requirements of section 226, then it has not knowingly and intentionally failed to comply with the wage statement law.") If successful, Defendant's defenses could eliminate or substantially reduce any recovery to the Class. While Plaintiffs believe that these defenses may have been overcome, they unquestionably called the claims here into serious doubt and therefore present a serious risk to recovery by the Class, which would be unwise to accept in light of the settlement amount Defendant agreed to pay. Decl. Nordrehaug, ¶ 24.

There was also a significant risk that, if the Action was not settled, Plaintiffs would be unable to obtain class certification and thereby not recover on behalf of any employees other than themselves Defendant argued that the individual experience of each putative class member varied with respect to the claims, which would preclude the claims from proceeding on a class basis. For instance, Plaintiffs' meal and rest period claims would require individualized inquiries into whether each employee took a compliant meal or rest period on a given shift and, if not, why. Plaintiffs are aware of other cases where class certification of similar claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th 885 (2019) (denying certification of rest break claims). Finally, even if class certification was successful, as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National Association*, 59 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class-wide recovery even where a class has been certified. While other cases have approved class certification of wage and hour claims, class certification in this Action would have been hotly disputed and 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 $4,000,000.00. 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 Members are all determined under a neutral methodology. Each Participating Class Member will receive the same opportunity to participate in and receive payment through a neutral formula that is based upon the Workweeks worked by that individual. Decl. Nordrehaug, ¶4.

Plaintiffs will apply to the Court for Class Representative Service Payments in consideration for their service and for the risks undertaken on behalf of the Class. (Agreement at ¶ 3.2(a).) Plaintiffs performed their duties admirably by working with Class Counsel. Decl. Nordrehaug at ¶27. The concurrently filed declarations of the Plaintiffs are presented herewith in support of the request. For purposes of this preliminary approval stage, the not to exceed amount is well within the accepted range of awards for purposes of preliminary approval, subject to the Court's final determination of the amount at final approval. *See, e.g.*, *Andrews v. Plains All Am. Pipeline L.P.*, 2022 U.S. Dist. LEXIS 172183, at *11 (C.D. Cal. 2022) (finding that the requested service awards of $15,000 each are appropriate); *Reynolds v. Direct Flow Med., Inc.*, 2019 U.S. Dist. LEXIS 149865, at *19 (N.D. Cal. 2019) (granting request for $12,500 service award); *Mathein v. Pier 1 Imps. (U.S.), Inc.,* 2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding $12,500 where average class member payment was $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 of $100,000 in enhancements). As explained in *Glass*, service awards are routinely awarded to class representatives to compensate them for the time and effort expended on the case, for the risk of litigation, for the fear of suing an employer and retaliation therefrom, and to serve as an incentive to vindicate the statutory rights of all employees. 2007 WL 221862 at *16-17.

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

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

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

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

V. THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES ONLY

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

All of Defendant's non-exempt employees who were assigned to work at any facility in

California at any time during the Class Period.

(Agreement at ¶ 1.5.)

The "Class Period" is from July 8, 2021 through September 17, 2025. (Agreement at ¶ 1.13.)

A. Class Certification for Purposes Of Settlement.

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

> Code of Civil Procedure Section 382 authorizes class actions "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court...." The party seeking certification 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 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.

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

Plaintiffs contend that the proposed Class satisfies the criteria for certification under Code of Civil Procedure section 382. Defendant disputes that Plaintiffs can satisfy any of these requirements for class certification in the litigation context, but does not oppose certification for purposes of the Settlement. Accordingly, the proposed Class should be certified for purposes of the Settlement only. (Agreement at ¶ 2.9.)

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 13,802 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 13,802 current and former employees 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.

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

In the Action, Plaintiffs contend that there can be little doubt that the typicality requirement is satisfied. Plaintiffs each worked for Defendant as a non-exempt employee during the Class Period.

Plaintiffs contend that, like every other member of the Class, they were subjected to the same practices and policies of Defendant and are subject to the same defenses. Thus, Plaintiffs assert that the claims of Plaintiffs and the Class Members arise from the same course of conduct by the Defendant, involve the same employment policies and practices of Defendant, and are based on the same legal theories. Decl. Nordrehaug at ¶30. For purposes of settlement, Plaintiffs maintain that the typicality requirement is met as to the common issues presented in this case.

4. Adequacy.

Plaintiffs contend that the Class Members are adequately represented here because Plaintiffs and Class Counsel (a) do not have any conflicts of interest with other Class members, and (b) will prosecute the case vigorously on behalf of the Class. *Hanlon*, 150 F.3d at 1020. First, Plaintiffs are well aware of their duties as the representatives of the Class and have actively participated in the prosecution of this case to date. Plaintiffs effectively communicated with counsel, provided documents to counsel, and participated in the investigation and negotiations in the Action. Second, Plaintiffs retained competent counsel who are experienced in employment class actions and who have no conflicts. Decl. Nordrehaug at ¶ 31; Declaration of Paul Haines at ¶¶ 2-11. Third, there is no antagonism between the interests of the Plaintiffs and those of the Class. Both Plaintiffs and the Class Members seek monetary relief under the same set of facts and legal theories.

5. Superiority.

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

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

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

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

VI. THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE

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

The Class Notice, drafted jointly and agreed upon by the Parties through their respective counsel and to be approved by the Court, includes all relevant information. (*See* Exhibit "A" to the Agreement.) The Class Notice will include, among other information: (i) information regarding the Action; (ii) the impact on the rights of the Class Members if they do not opt out, including a description of the applicable release; (iii) information to the Class Members regarding how to opt out and how to object to the Settlement; (iv) 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 (vi) the anticipated expenses of the Administrator. Decl. Nordrehaug at ¶32.

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

VII. CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that the Court preliminarily approve the proposed settlement and schedule the final approval hearing for June 3, 2026.

Dated: December 10, 2025 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

By: *__/s/ Kyle Nordrehaug__*
Kyle R. Nordrehaug, Esq. Attorney for Plaintiffs