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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **IN AND FOR THE COUNTY OF MONTEREY**

15 ANGELA GARCIA, an individual, on
16 behalf of herself and on behalf of all
17 persons similarly situated,

18 Plaintiff,

19 vs.

20 SUNDERSTORM INC., a Corporation;
21 SUNDERSTORM BAY LLC, a Limited
22 Liability Corporation; and DOES 1 through
23 50, inclusive,

24 Defendants.

Case No. 22CV001827

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

Hearing Date: September 29, 2023

Hearing Time: 8:30 a.m.

Judge: Hon. Thomas W. Wills

Dept: 15

Action Filed: June 29, 2022

Trial Date: Not Set

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1 **I. INTRODUCTION**

2 Plaintiff Angela Garcia (“Plaintiff”) respectfully submits this memorandum in support of the
3 unopposed motion for preliminary approval of the proposed class action settlement with Defendants
4 Sunderstorm Inc. and Sunderstorm Bay LLC (“Defendants”), and seeks entry of an order:
5 (1) preliminarily approving the proposed settlement of this class action with Defendants; (2) for
6 settlement purposes only, conditionally certifying the Class, which is comprised of “all individuals who
7 were employed by Defendants in California and classified as a non-exempt employee at any time during
8 the Class Period” of June 29, 2018 through July 1, 2023; (3) provisionally appointing Plaintiff as the
9 representative of the Class; (4) provisionally appointing Norman B. Blumenthal, Kyle R. Nordrehaug,
10 Aparajit Bhowmik, Nicholas J. DeBlouw, Jeffrey S. Herman, and Sergio J. Puche of Blumenthal
11 Nordrehaug Bhowmik De Blouw LLP as Class Counsel for the Class; (5) approving the form and
12 method for providing class-wide notice; (6) directing that notice of the proposed settlement be given
13 to the Class; (7) appointing ILYM Group as the Administrator; and (8) scheduling a final approval
14 hearing date proposed for February 23, 2024 to consider Plaintiffs’ motion for final approval of the
15 settlement and entry of the Judgment, and Plaintiffs’ motion for approval of attorneys’ fees and
16 expenses. Plaintiff and Defendants (collectively the “Parties”) have reached a full and final settlement
17 of the above-captioned action, which is set forth in the Class Action and PAGA Settlement Agreement
18 (“Agreement”) filed concurrently with the Court.¹ A copy of the fully executed Agreement is attached
19 as Exhibit #1 to the Declaration of Kyle Nordrehaug (“Decl. Nordrehaug”), served and filed herewith,
20 and the form of the Agreement is the Los Angeles Superior Court model form for class and PAGA
21 settlements.

22 As consideration for this Settlement, the Gross Settlement Amount is Six Hundred Thousand
23 Dollars (\$600,000) to be paid by Defendants, as set forth in the Agreement. The Gross Settlement
24 Amount will settle all issues pending in the Action between the Parties and will be made in full and
25 final settlement of the Released Class Claims. The Gross Settlement Amount includes all payments
26 of Individual Class Payments to the Participating Class Members, Administration Expenses Payment,

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

1 Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative
2 Service Payment, and the PAGA Penalties. The Gross Settlement Amount does not include the
3 employer's share of payroll taxes which will be separately paid by Defendants. The Settlement is all-in
4 with no reversion to Defendants and no need to submit a claim form. Decl. Nordrehaug at ¶3.

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

7 **\$600,000** (Gross Settlement Amount)

- 8 - \$10,000 (Plaintiff's proposed service award not to exceed \$10,000)
- 9 - \$15,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- 10 - \$200,000 (Class Counsel Fees Payment - not to exceed 1/3 of settlement)
- 11 - \$24,000 (PAGA Penalties payment - 75% to LWDA / 25% to Aggrieved Employees)
- 12 - \$7,000 (Administration Expenses Payment - not to exceed amount)

13 **\$344,000**(Net Settlement Amount)

14 Based upon 193 Class Members who collectively worked 10,296 weeks, the Gross Settlement Amount
15 provides a value of \$3,108 per Class Member and \$58 per work week and the Net Settlement Amount
16 provides an average recovery of \$1,782.38 per Class Member and a recovery of \$33.41 per work week.
17 Decl. Nordrehaug at ¶6.

18 On May 1, 2023, the Parties participated in an all-day mediation presided over by Hon. Carl J.
19 West (Ret.), a respected jurist and experienced mediator of wage and hour representative and class
20 actions. Following this mediation, the Parties reached an agreement to settle the Action based upon
21 a mediator's proposal which was memorialized in the form of a Memorandum of Understanding
22 executed in February 2023. Decl. Nordrehaug at ¶5. This Settlement is fair, reasonable and adequate,
23 and should be preliminarily approved because there is a substantial monetary payment, and there are
24 substantial litigation and class-certification risks. Therefore, Plaintiff respectfully requests that this
25 Court grant preliminary approval of the Agreement and enter the proposed order submitted herewith.

26 **II. DESCRIPTION OF THE SETTLEMENT**

27 The Gross Settlement Amount is Six Hundred Thousand Dollars (\$600,000) . (Agreement at
28 ¶ 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 Payment to Plaintiff; and (5) the PAGA Penalties payment.

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

4 Within twenty (20) days of the Effective Date, Defendants 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 Defendants fully fund 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, Class Representative Service
11 Payment, Class Counsel Fees Payment, 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 Defendants' 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.) All Class Members who do not "opt out" will be deemed
22 Participating Class Members who will be bound by the Settlement and will be entitled to receive an
23 Individual Class Payment. (Agreement at ¶ 8.5(c).) All Aggrieved Employees, including those who
24 submit an opt-out request, will still be paid their allocation of the PAGA Penalties and will remain
25 subject to the release of the Released PAGA Claims regardless of their request for exclusion.
26 (Agreement at ¶¶ 6.3 and 8.5(d).) Finally, the Class Notice will advise the Class Members of their right
27 to object to the Settlement and/or dispute their Workweeks. (Agreement at ¶¶ 8.6 and 8.7, Ex. A.)
28 Decl. Nordrehaug at ¶18.

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

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

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

16 Subject to Court approval, Twenty-Four Thousand Dollars (\$24,000) will be paid from the
17 Gross Settlement Amount for PAGA penalties under the California Private Attorneys General Act, Cal.
18 Labor Code Section 2698, *et seq.* ("PAGA"). Pursuant to the express requirements of Labor Code §
19 2699(i), the PAGA Penalties shall be allocated as follows: 75% (\$18,000) shall be allocated to the
20 Labor Workforce Development Agency ("LWDA") as its share of the civil penalties and 25% (\$6,000)
21 allocated to the Individual PAGA Payments to be distributed to the Aggrieved Employees based on the
22 number of their respective PAGA Pay Periods. (Agreement at ¶ 3.2(d).) As set forth in the
23 accompanying proof of service, the LWDA has been served with this motion and the Agreement. Decl.
24 Nordrehaug at ¶22.

25 **III. CASE BACKGROUND**

26 The description of the case and claims, along with the procedural history, is set forth in the
27 Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and the
28 exchange of documents and information in connection with the Action which permitted Class Counsel

1 to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and 14. The Parties participated
2 in mediation on May 1, 2023 with Hon. Carl J. West (Ret.), which after arm's length negotiations,
3 resulted in this Settlement. Decl. Nordrehaug, ¶12.

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

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

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

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

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

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

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

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

18 In considering a potential settlement for preliminary approval purposes, the trial court does not
19 have to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the
20 dispute, and need not engage in a trial on the merits. *Wershba, supra*, 91 Cal.App.4th at 239-40; *Dunk*,
21 *supra*, 48 Cal.App. 4th at 1807. The Ninth Circuit explains, "the very essence of a settlement is
22 compromise, 'a yielding of absolutes and an abandoning of highest hopes.'" *Officers for Justice*, 688
23 F.2d at 624. The question whether a proposed settlement is fair, reasonable and adequate necessarily
24 requires a judgment and evaluation by the attorneys for the parties based upon a comparison of "the
25 terms of the compromise with the likely rewards of litigation.'" *Weinberger v. Kendrick*, 698 F.2d 61,
26 73 (2d Cir. 1982), *cert. denied* 464 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders*
27 *of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)). Thus, when analyzing the
28 settlement, the amount is "not to be judged against a hypothetical or speculative measure of what might

1 have been achieved by the negotiators.” *Officers for Justice*, 688 F.2d at 625, 628.

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

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

11 A number of factors are to be considered in evaluating a settlement for purposes of preliminary
12 approval. In determining whether to grant preliminary approval, the court considers whether the "(1)
13 the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, (2)
14 has no obvious deficiencies, (3) does not improperly grant preferential treatment to class representatives
15 or segments of the class, and (4) falls within the range of possible approval." *In re Tableware Antitrust*
16 *Litig.*, 484 F.Supp. 2d 1078, 1079 (N.D. Cal. 2007). No one factor should be determinative, but rather
17 all factors should be considered. The analysis has been summarized as follows:

18 If the proposed settlement appears to be the product of serious, informed, noncollusive
19 negotiations, has no obvious deficiencies, does not improperly grant preferential
20 treatment to class representatives or segments of the class, and falls within the range of
21 possible approval, then the court should direct that notice be given to the class members
of a formal fairness hearing, at which evidence may be presented in support of and in
opposition to the settlement.

22 *Manual of Complex Litigation, Second* § 30.44, at 229.

23 Here, the Settlement meets all of these criteria for preliminary approval.

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

25 This settlement is the result of extensive and hard-fought litigation as well as negotiations
26 before an experienced and well-respected mediator. Defendants have expressly denied and continue
27 to deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff and
28 Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released

1 Class Claims of the Class in accordance with this Settlement.³

2 Class Counsel are experienced and qualified to evaluate the class claims, the defenses asserted,
3 and the risks and benefits of trial and settlement, and Class Counsel are particularly experienced in
4 wage and hour employment class actions, as Class Counsel has previously litigated and certified similar
5 claims against other employers. Decl. Nordrehaug at ¶31. The view of qualified and well-informed
6 counsel that a class action settlement is fair, adequate, and reasonable is entitled to significant weight.
7 *See Kullar v. Foot Locker*, 168 Cal. App. 4th 116, 133 (2008) (the trial court "undoubtedly should

8
9
10 ³ The release applicable to the Class is tethered to allegations in the Action as the "Released Class
11 Claims" are "all all claims and causes of action that were alleged, or reasonably could have been
12 alleged, based on the facts stated in the Operative Complaint, including all of the following: (a) all class
13 claims stated in the Operative Complaint alleging violations of sections 201, 202, 203, 204, 210, 218,
14 221, 226 et seq, 226.7, 233, 246, 246.5, 510, 512, 1194, 1194.2, 1197, 1197.1, 1198, 2802; (b) all
15 claims for unpaid wages, including claims for minimum, overtime, and double-time wages, the alleged
16 failure to pay for all time worked, the alleged failure to pay for off the clock work, the alleged failure
17 to pay for drug testing and other required testing and examinations, the alleged failure to pay for
18 temperature checks and symptom questionnaires for Covid-19, the alleged failure to pay for all hours
19 worked at correct rates, including overtime at the correct rates, the alleged improper rounding of time
20 entries, and the alleged unlawful deductions from earned wages; (c) all claims for meal period
21 violations, including claims for late, short, interrupted, rounded, and missed meal periods and the
22 failure to pay premiums at all, or at the correct regular rates, and the alleged failure to properly record
23 meal periods; (d) all claims for rest break violations, including claims for late, short, interrupted,
24 missed, or otherwise improperly controlled rest breaks and the failure to pay premiums at all or at the
25 correct regular rates; (e) all claims for unreimbursed expenses, including, but not limited to, expenses
26 incurred for personal cell phone usage, mileage, and home office expenses; (f) all claims for improper
27 or inaccurate itemized wage statements, including any alleged violations of Labor Code Section
28 226(a)(1)-(9) based on the facts and legal theories contained in the Operative Complaint, including the
allegation that the wage statements lacked the total number of hours worked and corresponding rates
and the proper legal entity of the employer, and including claims for injuries suffered therefrom; (g)
all claims for the untimely payment of wages, including regular, overtime, premium wages, paid sick
leave, and reporting time pay to employees under sections 204 and 210 of the Labor Code; (h) all
claims for the untimely payment of final wages and associated waiting time penalties under sections
201 to 203 of the Labor Code Section; (i) all claims for unpaid sick leave, including claims that paid
sick leave was not paid at the correct regular rate of pay; (j) all claims for civil penalties for the alleged
failure to pay employees for reporting time pay; and (k) all claims under the Business & Professions
Code (including Section 17200 et seq.) premised on the facts, claim, and causes of action alleged in the
Operative Complaint. Except as expressly set forth in this Agreement, Participating Class Members do
not release any other claims, including claims for vested benefits, wrongful termination, violation of
the Fair Employment and Housing Act, discrimination, unemployment insurance, disability, social
security, workers' compensation, or Class claims based on facts occurring outside the Class Period.."
(Agreement at ¶¶ 1.38 and 6.2.)

1 continue to place reliance on the competence and integrity of counsel, the involvement of a qualified
2 mediator, and the paucity of objectors to the settlement."); *Dunk*, 48 Cal. App. 4th at 1802.

3 The Parties attended an arms-length mediation session with Hon. Carl J. West (Ret.), a respected
4 jurist and experienced mediator of wage and hour class actions, in order to reach this Settlement. In
5 preparation for the mediation, Defendants provided Class Counsel with necessary information for the
6 members of the Class, including time punch data, payroll data and information concerning the
7 composition of the Class. Plaintiff analyzed the data with the assistance of damages expert, Berger
8 Consulting, and prepared and submitted a mediation brief and damage valuation to the Mediator.
9 Following this all-day mediation, the Parties agreed to this Settlement. The final settlement terms were
10 negotiated and set forth in the Agreement now presented for this Court's approval. Decl. Nordrehaug
11 at ¶ 5. Importantly, Plaintiff and Class Counsel believe that this Settlement is fair, reasonable and
12 adequate.

13 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendants
14 is Six Hundred Thousand Dollars (\$600,000). The Settlement is all-in with no reversion to Defendants
15 and no need to submit a claim form. Decl. Nordrehaug at ¶ 3.

16 Class Counsel has conducted a thorough investigation into the facts of the class action. Over
17 the course of more than one year, Class Counsel diligently evaluated the Class Members' claims against
18 Defendants. Prior to the settlement negotiations, counsel for Defendants provided Class Counsel with
19 access to necessary information for the Class. In addition, Class Counsel previously negotiated
20 settlements with other employers in actions involving nearly identical issues and analogous defenses.
21 Based on the foregoing data and their own independent investigation, evaluation and experience, Class
22 Counsel believes that the settlement with Defendants on the terms set forth in the Agreement is fair,
23 reasonable, and adequate and is in the best interest of the Class in light of all known facts and
24 circumstances, including the risk of significant delay, defenses asserted by Defendants, and potential
25 appellate issues. Decl. Nordrehaug at ¶ 14.

26 Plaintiffs and Class Counsel recognize the expense and length of continuing to litigate and
27 trying this Action against Defendants and then litigating possible appeals which could take several
28 years. Class Counsel has also taken into account the uncertain outcome and risk of litigation, especially

1 in complex class actions such as this Action. Class Counsel is also mindful of and recognizes the
2 inherent problems of proof under, and alleged defenses to, the claims asserted in the Action. Based
3 upon their evaluation, Plaintiffs and Class Counsel have determined that the Settlement set forth in the
4 Agreement is in the best interest of the Class Members. Decl. Nordrehaug, ¶ 23.

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

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

12 The proposed Settlement herein has no "obvious deficiencies" and is well within the range of
13 possible approval. All Class Members will receive an opportunity to participate in the Settlement and
14 receive payment according to the same formula. (Agreement at ¶ 3.2(e).) Based upon 193 Class
15 Members who collectively worked 10,296 weeks (Agreement at ¶ 4.1), the Gross Settlement Amount
16 provides a value of \$3,108 per Class Member and \$58 per work week and the Net Settlement Amount
17 provides an average recovery of \$1,782.38 per Class Member and a recovery of \$33.41 per work week.
18 Decl. Nordrehaug, ¶6.

19 The calculations to compensate for the amount due to the Class Members at the time this
20 Settlement was negotiated were calculated by Plaintiffs’ expert, Berger Consulting, in advance of
21 mediation. Class Counsel analyzed the data for putative class members and determined the potential
22 maximum damages for the class claims. For the Class, the maximum value of the claim for unpaid
23 wages due to off the clock work was potentially \$260,878, the maximum value of the claim for unpaid
24 wages due to an alleged miscalculation of the regular rate for wages and sick pay was \$17,157, the
25 maximum value of the claim for unpaid wages due to the maximum potential damages for unpaid meal
26 premiums were estimated to be \$47,400 based upon an alleged 18% violation rate and after deducting
27 the significant meal period premiums paid by Defendants, the maximum potential rest period damages
28 were estimated to be \$821,758 based upon an potential 85% violation rate observed in the time records,

1 and the maximum potential damages for failure to provide expense reimbursement were calculated to
2 be \$12,870. In total, the damages for the Class were calculated to have a maximum potential total value
3 of \$1,160,064. In addition, Plaintiff calculated that the maximum value of the potential waiting time
4 penalties were between \$223,914 and \$447,828, depending on the predicate violation, and the
5 maximum value of the potential wage statement penalties were \$215,500.⁴ Decl. Nordrehaug, ¶6.

6 Consequently, the Gross Settlement Amount represents more than 51% of the potential
7 maximum damages at issue for the Class in this case, assuming these amounts could all be proven in
8 full at trial.⁵ The above maximum calculations should then be adjusted in consideration for both the
9 risk of class certification and the risk of establishing class-wide liability on all claims. Given the
10 amount of the Settlement as compared to the potential value of the claims, the Settlement is most
11 certainly fair and reasonable.⁶ Clearly, the goal of this litigation has been met. Decl. Nordrehaug, ¶6.

12 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
13 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
14 Defendants present serious threats to the claims of the Plaintiffs and the other Class Members.
15 Defendants asserted that Defendants' practices complied with all applicable laws. Defendants argued
16 that all work time was paid for and that the regular rate was properly calculated. Defendants contended

17
18 ⁴ While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
19 226, at mediation Plaintiffs recognized that these claims were subject to additional, separate defenses
20 asserted by Defendants, including, a good faith dispute defense as to whether any wages were owed
21 given Defendants' position that Plaintiffs 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.").

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

24 ⁶ *See Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)
25 approving settlement which represented "roughly one-sixth of the potential recovery"); *Stovall-Gusman*
v. W.W. Granger, Inc., 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval
26 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.
27 Cal. 2016) (approving wage and hour class action settlement amounting to 8.1% of full verdict value);
28 *Ma v. Covidien Holding, Inc.*, 2014 WL 2472316, (C.D. Cal. 2014) (approving wage and hour class
action settlement worth "somewhere between 9% and 18%" of full verdict value).

1 that their meal and rest period policies fully complied with California law, that Defendants'
2 timekeeping system recorded meal periods, and that all meal periods were provided. Defendants' could
3 argue the significant meal period premiums paid was evidence of their legally compliance practices.
4 As to expenses reimbursement, Defendants maintained that employees were not required to use their
5 cell phones and any use of their cell phone was voluntary for their convenience and therefore not
6 subject to Labor Code §2802. Defendants argued that the decisions in *Brinker v. Superior Court*, 53
7 Cal. 4th 1004 (2012), *Lockheed Martin Corp. v. Superior Ct.*, 29 Cal. 4th 1096, 1108 (2003), and
8 *Salazar v. See's Candy Shops Inc.*, 64 Cal. App.5th 85 (2021), weakened Plaintiffs' claims, on liability,
9 value, and class certifiability as to the meal and rest period claims. Defendants also argue that based
10 on its facially lawful practices, they acted in good faith and without willfulness, which if accepted
11 would negate the claims for waiting time penalties and/or inaccurate wage statements. If successful,
12 Defendants' defenses could eliminate or substantially reduce any recovery to the Class. While Plaintiff
13 believe that these defenses could be overcome, Defendants maintains these defenses have merit and
14 therefore present a serious risk to recovery by the Class. Decl. Nordrehaug, ¶ 24.

15 There was also a significant risk that, if the Actions were not settled, Plaintiff would be unable
16 to obtain class certification and thereby not recover on behalf of any employees other than themselves.
17 Defendants argued that the individual experience of each putative class member varied with respect to
18 the claims. Defendants could also contest class certification by arguing injury and good faith were case-
19 by-case determinations that precluded class certification. Plaintiff is aware of other cases where class
20 certification of similar claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th 885
21 (2019) (denying certification of rest break claims). Finally, even if class certification was successful,
22 as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59
23 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class wide recovery even where the
24 class has been certified. While other cases have approved class certification in wage and hour claims,
25 class certification in this action would have been hotly disputed and was by no means a foregone
26 conclusion. Decl. Nordrehaug, ¶ 25.

27 After arm's length negotiations between experienced and informed counsel, the Parties
28 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of

1 \$600,000.00. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

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

8 2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
9 (9th Cir. 2000)).

10 **3. The Settlement Does Not Improperly Grant Preferential Treatment To**
11 **Class Representatives or Segments of The Class**

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

17 Plaintiff will apply to the Court for a Class Representative Service Payment in consideration
18 for her service and for the risks undertaken on behalf of the class. (Agreement at ¶ 3.2(a).) Plaintiff
19 performed her duties admirably by working with Class Counsel. Decl. Nordrehaug at ¶27. In support,
20 Plaintiff’s declaration addresses her work and service on behalf of the Class. For purposes of this
21 preliminary approval stage, the requested service award of \$10,000 is well within the accepted range
22 of awards for purposes of preliminary approval. *See e.g. Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S.
23 Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500 where average class member payment was
24 \$351); *Holman v. Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014)
25 (approving \$10,000 service award where class member recovery was \$375); *Louie v. Kaiser*
26 *Foundation Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D.Cal. 2008) (awarding \$25,000 service
27 award to each of six plaintiffs in overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862,
28 *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 the employees 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

1 to vindicate the statutory rights of all employees. 2007 WL 221862 at *16-17.

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

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

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

21 In *Glass*, the Northern District of California granted final approval of an overtime wage action
22 although in *Glass* no formal discovery had been conducted prior to the settlement:

23 Here, no formal discovery took place prior to settlement. As the Ninth Circuit has
24 observed, however, "[i]n the context of class action settlements, 'formal discovery is not
a necessary ticket to the bargaining table' where the parties have sufficient information
to make an informed decision about settlement."

25 *Glass*, 2007 U.S. Dist. LEXIS 8476 at *14 (quoting *In re Mego Financial Corp. Securities Litigation*,
26 213 F.3d at 459).

27 Here, Class Counsel was in a better position to evaluate the fairness of this Settlement because
28 Class Counsel obtained informal discovery and received all necessary information which was evaluated

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

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

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

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

10 (Agreement at ¶ 1.5.)

11 The “Class Period” is from June 29, 2018 through July 1, 2023. (Agreement at ¶ 1.13.)

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

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

16 Code of Civil Procedure Section 382 authorizes class actions “when the question is one
17 of a common or general interest, of many persons, or when the parties are numerous,
18 and it is impracticable to bring them all before the court....” The party seeking
19 certification has the burden to establish the existence of both an ascertainable class and
20 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.

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

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

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

26 Plaintiff brings this Action on behalf of a Class of non-exempt employees who worked for
27 Defendants during the applicable Class Period. Plaintiff asserts that all of these individuals are
28 ascertainable because the class members can readily be determined through examination of Defendants’

1 files. Given that the Class consists of approximately 193 members, Plaintiff maintains that numerosity
2 is clearly satisfied. *See Bowles v. Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members
3 sufficiently numerous); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of 48 members
4 satisfies numerosity requirement.) Here, Plaintiff asserts that the 193 individuals who comprise the
5 Class can be identified based on Defendants' records and are sufficiently numerous for class
6 certification. Decl. Nordrehaug at ¶30.

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

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

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

19 Here, Plaintiff contends that common questions of law and fact are present, and specifically the
20 common questions of whether Defendants miscalculated the regular rate, whether Defendants failed
21 to pay wages for all time worked, whether the Defendants failed to provide meal and rest periods,
22 whether Defendants failed to provide required expense reimbursement, and whether Class Members
23 are entitled to damages and penalties as a result of these practices. Decl. Nordrehaug, ¶30. Defendants
24 dispute that common questions predominate but will not oppose such a finding for purposes of this
25 Settlement only.

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

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

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

5 In this Action, Plaintiff contends that there can be little doubt that the typicality requirement is
6 satisfied. The Plaintiff worked for Defendants as a non-exempt employee during the Class Period.
7 Plaintiff contends that, like every other member of the Class, she were subject to the same practices and
8 policies of Defendants and are subject to the same defenses. Thus, Plaintiff asserts that the claims of
9 the Plaintiff and the Class Members arise from the same course of conduct by the Defendants, involve
10 the same official policies and practices of Defendants, and are based on the same legal theories. Decl.
11 Nordrehaug at ¶30. For purposes of settlement, Plaintiff maintains that the typicality requirement is
12 met as to the common issues presented in this case. Defendants dispute typicality but Defendants do
13 not oppose a finding of typicality for purposes of this Settlement only.

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

15 Plaintiff contends that the Class Members are adequately represented here because Plaintiff and
16 representing counsel (a) do not have any conflicts of interest with other class members, and (b) will
17 prosecute the case vigorously on behalf of the class. *Hanlon*, 150 F.3d at 1020. This requirement is
18 met here. First, Plaintiff is well aware of her duties as the representative of the Class and have actively
19 participated in the prosecution of this case to date. Plaintiff effectively communicated with counsel,
20 provided documents to counsel and participated in the investigation and negotiations in the Action.
21 Second, Plaintiff retained competent counsel who are experienced in employment class actions and who
22 have no conflicts. Decl. Nordrehaug at ¶ 31. Third, there is no antagonism between the interests of the
23 Plaintiff and those of the Class. Both the Plaintiff and the Class Members seek monetary relief under
24 the same set of facts and legal theories. Defendants dispute that the adequacy requirement is satisfied
25 but will not oppose such a finding for purposes of this Settlement only.

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

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

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

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

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

11 Here, Plaintiff contends that a class action is the superior mechanism for resolution of the claims
12 as pled by Plaintiff. While Defendants dispute that class treatment is superior, Defendants do not
13 dispute a finding of superiority in this action for purposes of this Settlement only.

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

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

23 The Class Notice, drafted jointly and agreed upon by the Parties through their respective counsel
24 and to be approved by the Court, includes all relevant information. (See Exhibit “A” to the Agreement.)
25 The Class Notice will include, among other information: (i) information regarding the Action; (ii) the
26 impact on the rights of the Class Members if they do not opt out, including a description of the
27 applicable release; (iii) information to the Class Members regarding how to opt out and how to object
28 to the Settlement; (iv) the estimated Individual Class Payment for each of the Class Members; (iii) the
amount of attorneys’ fees and expenses to be sought; (v) the amount of the Plaintiff’s service award
request; and (vi) the anticipated expenses of the Administrator. Decl. Nordrehaug at ¶32.

1 The Class Notice will state that the Class Members shall have forty-five (45) days from the date
2 that the Notice is mailed to them (the “Response Deadline”) to request exclusion (opt-out) or to submit
3 an objection. (Agreement at ¶¶ 1.42, 8.5, 8.7.) Class Members shall be given the opportunity to object
4 to the Settlement and/or requests for attorneys’ fees and expenses and to appear at the Final Approval
5 Hearing. (Agreement at ¶ 8.7.) Class Members who do not submit a timely and proper request to opt-
6 out will automatically receive a payment of their Individual Class Payment. This notice program was
7 designed to meaningfully reach the Class Members and it advises them of all pertinent information
8 concerning the Settlement. Decl. Nordrehaug at ¶32. The mailing and distribution of the Class Notice
9 satisfies the requirements of due process and is the best notice practicable under the circumstances and
10 complies with Rules of Court 3.766 and 3.769(f).

11 **VII. CONCLUSION**

12 Plaintiff respectfully requests that the Court preliminarily approve the proposed settlement and
13 sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the final
14 fairness hearing for February 23, 2024, or as soon thereafter as is available for the Court.

15 Dated: August 28, 2023

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

17 By: /s/ Kyle Nordrehaug
18 Kyle R. Nordrehaug, Esq.
19 Attorney for Plaintiff
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