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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14 **IN AND FOR THE COUNTY OF SANTA CLARA**

15 MAURICIO VIDES, an individual, on  
16 behalf of himself and on behalf of all persons  
17 similarly situated,

18 Plaintiff,

19 vs.

20 ALEXANDER'S STEAKHOUSE, INC., a  
21 California Corporation; and DOES 1  
22 through 50, inclusive,

23 Defendants.

**Case No. 22CV399448**

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

Hearing Date: July 11, 2024  
Hearing Time: 1:30 p.m.

Judge: Hon. Charles F. Adams  
Dept: 7

Date Filed: June 24, 2022  
Trial Date: Not set

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1     **I.     INTRODUCTION**

2             Plaintiff Mauricio Vides (“Plaintiff”) will move for an order: (1) preliminarily approving the  
3 proposed settlement of this class action with Defendant Alexander’s Steakhouse, Inc. (“Defendant”);  
4 (2) for settlement purposes only, conditionally certifying the Class, which is comprised of “all individuals  
5 who were employed by Defendant in California and classified as a non-exempt employee at any time  
6 during the Class Period”, which is June 24, 2018 through November 18, 2023; (3) provisionally  
7 appointing Plaintiff as the representatives of the Class; (4) provisionally appointing orman B. Blumenthal,  
8 Kyle R. Nordrehaug, Aparajit Bhowmik, Nicholas J. De Blouw, Jeffrey S. Herman, Sergio J Puche, and  
9 Trevor G. Moran of Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel for the Class;  
10 (5) approving the form and method for providing notice to the Class of the proposed settlement;  
11 (6) directing that notice of the proposed settlement be given to the Class; (7) appointing ILYM Group  
12 as the Administrator; and (8) scheduling a final approval hearing date for December 5, 2024 to consider  
13 the Plaintiff’s motion for final approval of the settlement and for approval of attorneys’ fees, expenses  
14 and the service award. Plaintiff and Defendant have reached a full and final settlement of the  
15 above-captioned action, which is set forth in the Class Action and PAGA Settlement Agreement (the  
16 “Agreement”) filed concurrently with the Court.<sup>1</sup> A copy of the fully executed Agreement is attached  
17 as Exhibit #1 to the Declaration of Kyle Nordrehaug (“Decl. Nordrehaug”), served and filed herewith,  
18 and the form of the Agreement is based on the Los Angeles Superior Court model form for class and  
19 PAGA settlements.

20             As consideration for this Settlement, the Gross Settlement Amount is One Million Seventy  
21 Thousand Dollars (\$1,070,000) to be paid by Defendant, as set forth in the Agreement. The Gross  
22 Settlement Amount will settle all issues pending in the Action between the Parties and will be made in  
23 full and final settlement of the released claims. The Gross Settlement Amount includes all payments of  
24 Individual Class Payments to the Participating Class Members, the Administration Expenses Payment  
25 to the Administrator, the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment  
26 to Class Counsel, the Class Representative Service Payment to Plaintiff, and the PAGA Penalties

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

1 payment to the California Labor and Workforce Development Agency (the “LWDA”) and the Aggrieved  
2 Employees. The Gross Settlement Amount does not include the employer’s share of payroll taxes which  
3 will be separately paid by Defendant. The Settlement is all-in with no reversion to Defendant and no  
4 need for Class Members to submit claim forms. Decl. Nordrehaug at ¶3.

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

6 **\$1,070,000** (Gross Settlement Amount)

- 7 - \$12,500 (Plaintiff’s proposed service award not to exceed amount)
- 8 - \$21,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- 9 - \$356,666 (Class Counsel Fees Payment - not to exceed one-third of settlement)
- \$30,000 (PAGA Penalties - 75% to LWDA / 25% to Aggrieved Employees)
- \$20,000 (Administration Expenses Payment - not to exceed amount)

9 **\$629,834** (Net Settlement Amount)

10 Based upon 1,687 Class Members who collectively worked 76,601 Workweeks (Agreement at ¶ 4.1),  
11 the Gross Settlement Amount provides a value of \$634 per Class Member and \$13.96 per Workweek  
12 and, after deductions, the Net Settlement Amount provides an average recovery of \$373.34 per Class  
13 Member and \$8.22 per Workweek. Decl. Nordrehaug at ¶6.

14 On July 7, 2023, the Parties participated in an all-day mediation session presided over by Hon.  
15 Brian C. Walsh (Ret.), a respected jurist and experienced mediator of wage and hour class actions.  
16 Following this mediation, the Parties reached an agreement to settle the Action. Decl. Nordrehaug at  
17 ¶5. The Settlement is fair, reasonable and adequate, and should be preliminarily approved because there  
18 is a substantial monetary payment, and there are substantial litigation and class-certification risks.  
19 Therefore, Plaintiff respectfully requests that this Court grant preliminary approval of the Agreement and  
20 enter the proposed order submitted herewith.

21 **II. DESCRIPTION OF THE SETTLEMENT**

22 The Gross Settlement Amount is One Million Seventy Thousand Dollars (\$1,070,000).  
23 (Agreement at ¶ 1.22.) Under the Settlement, the Gross Settlement Amount consists of the following  
24 elements: (i) all Individual Class Payments and Individual PAGA Payments; (ii) the LWDA PAGA  
25 Payment; (iii) the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment; (iv)  
26 the Class Representative Service Payment; and (v) the Administration Expenses Payment. (Agreement  
27 at ¶ 1.22.) The Gross Settlement Amount does not include Defendant’s share of payroll taxes.  
28 (Agreement at ¶ 3.1.) The Gross Settlement Amount shall be all-in with no reversion to Defendant.

1 (Agreement at ¶ 3.1.) Decl. Nordrehaug at ¶15.

2 Defendant will fund the Gross Settlement Amount by making two payments, the first payment  
3 of \$725,000 is due within sixty days of final approval or by September 13, 2024, whichever is later, and  
4 the second payment of \$345,000 is due on or before July 14, 2025. (Agreement at ¶ 4.3.) The  
5 distribution of Individual Class Payments to Participating Class Members along with the other Court-  
6 approved distributions shall be made by the Administrator within fourteen (14) days after Defendant fully  
7 funds the Gross Settlement Amount. (Agreement at ¶ 5.1.) Decl. Nordrehaug at ¶16.

8 The amount remaining in the Gross Settlement Amount after the deduction of Court-approved  
9 amounts for Individual PAGA Payments, the LWDA PAGA Payment, the Class Representative Service  
10 Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the  
11 Administration Expenses Payment (the "Net Settlement Amount") shall be allocated to Participating  
12 Class Members as their Individual Class Payments. (Agreement at ¶¶ 1.28 and 3.2(e).) From the Net  
13 Settlement Amount, the Individual Class Payment for each Participating Class Member will be calculated  
14 by (i) dividing the Net Settlement Amount by the total number of Workweeks worked by all  
15 Participating Class Members during the Class Period and, (b) multiplying the result by each Participating  
16 Class Member's Workweeks.<sup>2</sup> (Agreement at ¶ 3.2(e).) Workweeks will be calculated based on  
17 Defendant's records; however, Class Members will have the right to challenge their number of  
18 Workweeks. Decl. Nordrehaug at ¶17.

19 Class Members may choose to opt-out of the Settlement by following the directions in the Class  
20 Notice. (Agreement at ¶ 8.5, Ex. A.) All Class Members who do not "opt out" will be deemed  
21 Participating Class Members and will be bound by the Settlement and will be entitled to receive an  
22 Individual Class Payment. (Agreement at ¶ 8.5(c).) All Aggrieved Employees, including any who  
23 submit an opt-out request, still will receive an Individual PAGA Payment and will release of the Released  
24 PAGA Claims regardless of their request for exclusion. (Agreement at ¶¶ 6.3 and 8.5(d)) Finally, the  
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26 <sup>2</sup> To account for settlement funds received in exchange for the class action release settlement in  
27 *Robert Buckley v. Alexander's Steakhouse, Inc.*, San Francisco Superior Court Case No.  
28 CGC-20-584112, Class Members who were part of the *Buckley* class will not have their workweeks  
between the period of 6/24/18 to 1/31/22 weighted. All other workweeks will be weighted by 2.

1 Class Notice will advise the Class Members of their right to object to the Settlement and/or dispute their  
2 Workweeks. (Agreement at ¶¶ 8.6 and 8.7, Ex. A.) Decl. Nordrehaug at ¶18.

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

9 Subject to Court approval, the Parties have agreed on ILYM Group to administer the settlement  
10 in this action (the "Administrator"). (Agreement at ¶ 1.2.) The Administrator will be paid for settlement  
11 administration in an amount not to exceed \$20,000. (Agreement at ¶ 3.2(c).) Decl. Nordrehaug at ¶20.  
12 A Declaration from ILYM is submitted herewith. See Decl. Nordrehaug at ¶37.

13 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not  
14 to exceed one-third of the Gross Settlement Amount as the Class Counsel Fees Payment. (Agreement  
15 at ¶ 3.2(b).) Class Counsel will also be allowed to apply for an award of Class Counsel Litigation  
16 Expenses Payment in an amount not to exceed \$21,000. (Agreement at ¶ 3.2(b).) Subject to Court  
17 approval, the Agreement provides for a payment of no more than \$12,500 to Plaintiff as the Class  
18 Representative Service Payment. (Agreement at ¶ 3.2(a).) Decl. Nordrehaug at ¶21.

19 Subject to Court approval, Thirty Thousand Dollars (\$30,000) will be paid from the Gross  
20 Settlement Amount in settlement of Plaintiff's claim for civil penalties under the California Labor Code  
21 Private Attorneys General Act ("PAGA"), Cal. Labor Code Section 2698, *et seq.* Pursuant to the  
22 express requirements of Labor Code § 2699(i), the PAGA Penalties payment shall be allocated as  
23 follows: 75% (\$22,500) shall be allocated to the LWDA as its share of the civil penalties and 25%  
24 (\$7,500) allocated to the Aggrieved Employees and distributed as Individual PAGA Payments based on  
25 the number of their respective PAGA Pay Periods. (Agreement at ¶ 3.2(d).) As set forth in the  
26 accompanying proof of service, the LWDA has been served with this motion and the Agreement. Decl.  
27 Nordrehaug at ¶22.

1     **III.     CASE BACKGROUND**

2             The description of the case and claims, along with the procedural history, is set forth in the  
3 Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and an  
4 informal exchange of documents, information, and data in connection with the Action which permitted  
5 Class Counsel to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and 14. The  
6 Parties participated in private mediation on July 7, 2023 with Hon. Brian C. Walsh (Ret.), which after  
7 arm's length negotiations, resulted in this Settlement. Decl. Nordrehaug, ¶12.

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

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

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

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

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

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

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

20 In considering a potential settlement for preliminary approval purposes, the trial court need not  
21 reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute, and  
22 need not engage in a trial on the merits. *Wershba, supra*, 91 Cal.App.4th at 239-40; *Dunk, supra*, 48  
23 Cal.App. 4th at 1807. The Ninth Circuit explains, “the very essence of a settlement is compromise, ‘a  
24 yielding of absolutes and an abandoning of highest hopes.’” *Officers for Justice*, 688 F.2d at 624. The  
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26 <sup>3</sup> California courts look to federal authority on class actions. *Vasquez v. Superior Court*, 4 Cal.3d  
27 800, 821 (1971). “It is well established that in the absence of relevant state precedents trial courts are  
28 urged to follow the procedures prescribed in Rule 23 of the Federal Rules of Civil Procedure for  
conducting class actions.” *Frazier v. City of Richmond*, 184 Cal. App.3d 1491, 1499 (1986), *citing*  
*Green v. Obledo*, 29 Cal.3d 126, 145-146 (1981).

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

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

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

17 A number of factors are to be considered in evaluating a settlement for purposes of preliminary  
18 approval. In determining whether to grant preliminary approval, the court considers whether “(1) the  
19 proposed settlement appears to be the product of serious, informed, non-collusive negotiations, (2) has  
20 no obvious deficiencies, (3) does not improperly grant preferential treatment to class representatives or  
21 segments of the class, and (4) falls within the range of possible approval.” *In re Tableware Antitrust*  
22 *Litig.*, 484 F.Supp. 2d 1078, 1079 (N.D. Cal. 2007). Courts hold that “a presumption of fairness exists  
23 where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are  
24 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar  
25 litigation; and (4) the percentage of objectors is small.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.  
26 App. 4th 116, 128 (2008). Here, the Settlement meets all of these criteria for preliminary approval, and  
27 therefore, the presumption applies.  
28

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

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

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

16              The Parties attended an arms-length mediation session with Hon. Brian C. Walsh (Ret.), a  
17              respected jurist and experienced mediator of wage and hour class actions, to reach the Settlement. In  
18              preparation for the mediation, Defendant provided Class Counsel with necessary information, including  
19              the payroll and timekeeping data for the Class. Plaintiff analyzed the data with the assistance of a

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20              <sup>4</sup> The release applicable to the Class is tethered to allegations in the Action as the “Released Class  
21              Claims” are “all claims that were alleged, or reasonably could have been alleged, based facts stated in  
22              the Operative Complaint, which occurred during the Class Period, including but not limited to claims  
23              for unpaid service charges and/or gratuities, failure to pay overtime compensation, failure to provide  
24              meal periods, failure to provide rest periods, failure to pay meal and/or rest period premiums, failure to  
25              include bonuses or incentive wages in calculating the regular rate of pay, failure to pay wages for  
26              off-the-clock work including time spent studying food and menu items and time spent donning and  
27              doffing, failure to reimburse business expenses including but not limited to expenses for cell phone usage  
28              and use of personal computers, failure to furnish accurate wage statements, failure to timely pay all  
                earned wages, waiting time penalties, and violations of California & Professions Code § 17200, et seq.”  
                . Participating Class Members do not release any other claims, including claims for vested benefits,  
                wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance,  
                disability, social security, workers' compensation, and Class claims based on facts occurring outside the  
                Class Period.” (Agreement at ¶¶ 1.38 and 6.2.)

1 damages expert, Berger Consulting, and prepared and submitted a mediation brief and damage valuation  
2 to the Mediator. Following the all-day mediation, the Parties agreed to the Settlement, which was  
3 memorialized in the form of a Memorandum of Understanding. The final terms of the Settlement were  
4 negotiated and set forth in the Agreement now presented for this Court's approval. Decl. Nordrehaug  
5 at ¶ 5. Importantly, Plaintiff and Class Counsel believe that this Settlement is fair, reasonable and  
6 adequate.

7 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant is  
8 One Million Seventy Thousand Dollars (\$1,070,000). The Settlement is all-in with no reversion to  
9 Defendant and no need for Class Members to submit claim forms. Decl. Nordrehaug at ¶3.

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

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

28 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 1,687 Class Members who collectively worked 76,601 Workweeks (Agreement at ¶ 4.1), the Gross Settlement Amount provides a value of \$634 per Class Member and \$13.96 per Workweek and, after deductions, the Net Settlement Amount provides an average recovery of \$373.34 per Class Member and \$8.22 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 Plaintiff’s 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 value of the claim for unpaid wages due to alleged off-the-clock work was \$1,776,662, the maximum potential damages for alleged meal period violations were estimated to be \$1,024,609 based upon a 10.4% violation rate observed in the time records and after deduction of meal premiums already paid by Defendant, the maximum potential damages for alleged rest period violations were estimated to be \$1,098,559 based upon the same 10.4% potential violation rate observed for meal periods, and the maximum potential damages for the alleged failure to reimburse business expenses were calculated to be \$90,085 based upon \$5 per month. In total, the damages for the Class were calculated to have a maximum potential total value of \$3,989,915. In addition, Plaintiff calculated that the maximum value of the potential waiting time penalties was \$5,162,796, and the maximum value of the potential wage statement penalties were \$2,581,350.<sup>5</sup> Decl.

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<sup>5</sup> While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and 226, at mediation Plaintiff recognized that these claims were subject to additional, separate defenses asserted

1 Nordrehaug, ¶6.

2       Consequently, the Gross Settlement Amount represents more than 26% of Plaintiff's calculation  
3 of the potential maximum damages at issue for the Class in this case, assuming these amounts could all  
4 be proven in full at trial.<sup>6</sup> Importantly, The recent decision that good faith belief of compliance by the  
5 employer in *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065 (2024), could completely  
6 negate the claims for waiting time and wage statement penalties, even if wages were owed to the class.  
7 The maximum calculations should then be realistically risk rated in consideration for both the risk of class  
8 certification and the risk of establishing class-wide liability on all claims. Given the amount of the  
9 Settlement as compared to the potential value of the claims, the Settlement is most certainly fair and  
10 reasonable.<sup>7</sup> Clearly, the goal of this litigation has been met. Decl. Nordrehaug, ¶6.

11       Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*  
12 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by  
13 Defendant present serious threats to the claims of the Plaintiff and the other Class Members. Defendant  
14 maintains that its practices complied with all applicable wage and hour laws. Defendant maintains that  
15 all Class Members' work time was properly recorded and compensated. Defendant contends that its  
16 meal and rest period policies and practices provide Class Members with meal and rest periods and that

17 \_\_\_\_\_  
18 by Defendant, including but not limited to, a good-faith dispute defense as to whether any premium  
19 wages for meal or rest periods or other wages were owed given Defendant's position that Plaintiff and  
20 Class Members were properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576,  
21 584 (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       <sup>6</sup> Because the PAGA claim does not provide a recovery to the Class, Plaintiff did not included the  
23 PAGA claim in this discussion of the class claim valuation. The PAGA claim is addressed in the Decl.  
Nordrehaug at ¶ 33.

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

1 the payment of significant meal premiums is evidence of Defendant's legal compliant practices. As to  
2 expense reimbursement, Defendant maintains that it did not fail to provide reimbursement for necessary  
3 business expenses because, among other things, employees are not required to use their personal cell  
4 phones to perform their work. Defendant could argue that the decisions in *Brinker v. Superior Court*,  
5 53 Cal. 4th 1004 (2012), *Lockheed Martin Corp. v. Superior Ct.*, 29 Cal. 4th 1096, 1108 (2003), and  
6 *Salazar v. See's Candy Shops Inc.*, 64 Cal.App.5th 85 (2021), weakened Plaintiff's claims in terms of  
7 liability and value, and preclude claims from proceeding on a class or representative basis. Defendant  
8 also maintains that a good faith defense would negate the claims for waiting time penalties and/or failure  
9 to provide accurate itemized wage statements. See e.g. *Naranjo v. Spectrum Sec. Servs.*, 15 Cal. 5th  
10 1056, 1065 (May 6, 2024) ("if an employer reasonably and in good faith believed it was providing a  
11 complete and accurate wage statement in compliance with the requirements of section 226, then it has  
12 not knowingly and intentionally failed to comply with the wage statement law.") If successful,  
13 Defendant's defenses could eliminate or substantially reduce any recovery to the Class. While Plaintiff  
14 believes that these defenses could be overcome, Defendant maintains these defenses have merit and  
15 therefore present a serious risk to recovery by the Class. Decl. Nordrehaug, ¶ 24.

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

1 After arm's-length negotiations between experienced and informed counsel, the Parties  
2 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of  
3 \$1,070,000.00. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

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

10 2007 WL 221862, at \*4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458  
11 (9th Cir. 2000)).

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

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

19 Plaintiff will apply to the Court for a Class Representative Service Payment in consideration for  
20 his service and for the risks undertaken on behalf of the Class. (Agreement at ¶ 3.2(a).) Plaintiff  
21 performed his duties admirably by working with Class Counsel. Decl. Nordrehaug at ¶27. The  
22 concurrently filed declaration of the Plaintiff is presented herewith in support of the request. For  
23 purposes of this preliminary approval stage, the requested service award of is well within the accepted  
24 range of awards for purposes of preliminary approval. *See, e.g., Andrews v. Plains All Am. Pipeline*  
25 *L.P.*, 2022 U.S. Dist. LEXIS 172183, at \*11 (C.D. Cal. 2022) (finding that the requested service awards  
26 of \$15,000 each are appropriate); *Reynolds v. Direct Flow Med., Inc.*, 2019 U.S. Dist. LEXIS 149865,  
27 at \*19 (N.D. Cal. 2019) (granting request for \$12,500 service award); *Mathein v. Pier 1 Imps. (U.S.),*  
28 *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

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

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

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

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

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

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

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

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

8 All individuals who were employed by Defendant 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 24, 2018 through November 18, 2023. (Agreement at ¶ 1.13.)

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

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

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

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

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

25 **1. Ascertainability And Numerosity.**

26 Plaintiff brings this Action on behalf of a Class of non-exempt employees who worked for  
27 Defendant 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 Defendant’s

1 files. Given that the Class consists of approximately 1,687 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 1,687 individuals who comprise the  
5 Class can be identified based on Defendant's records and are sufficiently numerous for class certification.  
6 Decl. Nordrehaug at ¶30.

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

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 on*  
10 *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 fact  
12 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 Defendant's practices were lawful, whether Class members were lawfully  
21 compensated for all hours worked, whether the Defendant failed to provide all legally required meal and  
22 rest periods to Class Members, whether Defendant failed to provide required expense reimbursement,  
23 and whether Class Members are entitled to damages and penalties as a result of these alleged practices.  
24 Decl. Nordrehaug, ¶30.

## 25 **3. Typicality.**

26 The typicality requirement requires the Plaintiff to demonstrate that the members of the class  
27 have the same or similar claims as the plaintiff. "The typicality requirement is met when the claims of  
28 the [p]laintiff arise from the same event or are based on the same legal theories." *Tate v. Weyerhaeuser*

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

4 In the Action, Plaintiff contends that there can be little doubt that the typicality requirement is  
5 satisfied. Plaintiff worked for Defendant as non-exempt employee during the Class Period. Plaintiff  
6 contends that, like every other member of the Class, he was subjected to the same practices and policies  
7 of Defendant and is subject to the same defenses. Thus, Plaintiff asserts that the claims of Plaintiff and  
8 the Class Members arise from the same course of conduct by the Defendant, involve the same  
9 employment policies and practices of Defendant, and are based on the same legal theories. Decl.  
10 Nordrehaug at ¶30. For purposes of settlement, Plaintiff maintains that the typicality requirement is met  
11 as to the common issues presented in this case.

#### 12 4. Adequacy.

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

#### 22 5. Superiority.

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

28 Absent class treatment, each individual plaintiff would present in separate, duplicative

1 proceedings the same or essentially the same arguments and evidence, including expert  
2 testimony. The result would be a multiplicity of trials conducted at enormous expense  
3 to both the judicial system and the litigants. “It would be neither efficient nor fair to  
4 anyone, including defendants, to force multiple trials to hear the same evidence and  
5 decide the same issues.”

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

7 Here, Plaintiff contends that a class action is the superior mechanism for resolution of the claims  
8 as pled by the Plaintiff.

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

10 The Court has broad discretion in approving a practical notice program. *7- Eleven Owners for*  
11 *Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1164 (2000). The Parties have agreed  
12 upon procedures by which the Class Members will be provided with written notice of the Settlement  
13 similar to those approved and utilized in hundreds of class action settlements. In accordance with the  
14 Agreement, Defendant will provide to the Administrator a confidential electronic spreadsheet containing  
15 the Class Data. (Agreement at ¶ 4.2.) Within 14 days after receiving the Class Data, the Administrator  
16 will mail the Class Notice to all Class Members via first-class U.S. Mail using the most current mailing  
17 address information available. (Agreement at ¶ 8.4(b).) The mailing will include a Spanish translation  
18 of the Class Notice. (Agreement at ¶ 1.11.)

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

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

9 **VII. CONCLUSION**

10 Based on the foregoing, Plaintiff respectfully requests that the Court preliminarily approve the  
11 proposed settlement and sign the proposed Preliminary Approval Order, which is submitted herewith,  
12 and schedule the final approval hearing for December 5, 2024.

13 Dated: June 13, 2024

**BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

By: /s/ Kyle Nordrehaug

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Attorney for Plaintiff