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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

DONALD MATHEWS, an individual, on
behalf of himself and on behalf of all
persons similarly situated,

Plaintiff,

vs.

HANSEN & ADKINS AUTO
TRANSPORT, INC., a California
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO.: **CVRI2203075**
[Consolidated with CVRI2203224]

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

Hearing Date: November 14, 2023

Hearing Time: 8:30 a.m.

[Hearing set by Order dated Sept 26, 2023]

Judge: Hon. Harold W. Hopp

Dept: 1

Action Filed: July 21, 2022

Trial Date: Not Set

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1 **I. INTRODUCTION**

2 Plaintiff Donald Mathews (“Plaintiff”) respectfully submits this memorandum in support of the
3 unopposed motion for preliminary approval of the proposed class action settlement with Defendant
4 Hansen & Adkins Auto Transport, Inc. (“Defendant”), and seeks entry of an order: (1) preliminarily
5 approving the proposed settlement of this class action with Defendant; (2) for settlement purposes only,
6 conditionally certifying the following Class: “all individuals who are or previously worked for
7 Defendant in California who were classified as non-exempt at any time during the Class Period”, which
8 is July 21, 2018 to September 8, 2023.; (3) provisionally appointing Plaintiff as the representative of
9 the Class; (4) provisionally appointing Norman B. Blumenthal, Kyle Nordrehaug, and Aparajit
10 Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel for the Class; (5)
11 approving the form and method for providing class-wide notice; (6) directing that notice of the
12 proposed settlement be given to the class; (7) appointing ILYM Group as Administrator, and
13 (8) scheduling a final approval hearing date to consider Plaintiff’s motion for final approval of the
14 settlement and entry of the Judgment, and Plaintiff’s motion for approval of attorneys’ fees and
15 litigation expenses. Plaintiff and Defendant (collectively the “Parties”) have reached a full and final
16 settlement of the above-captioned action, which is embodied in the Class Action and PAGA Settlement
17 Agreement (“Agreement”) filed concurrently with the Court.¹ A copy of the fully executed Agreement
18 is attached as Exhibit #1 to the Declaration of Kyle Nordrehaug (“Decl. Nordrehaug”), served and filed
19 herewith. The form of the Agreement is based upon the Los Angeles County Superior Court model
20 form for a class and PAGA settlement.

21 As consideration for this Settlement, the Gross Settlement Amount is Five Hundred
22 Seventy-Five Thousand Dollars (\$575,000) (the “Gross Settlement Amount”) to be paid by Defendant,
23 as set forth in the Agreement. The Gross Settlement Amount will settle all issues pending in the Action
24 between the Parties and will be made in full and final settlement of the Released Class Claims in
25 exchange for the payments to Participating Class Members from the Net Settlement Amount, and
26 includes (a) the costs of administration of the settlement, (b) all attorneys’ fees and costs, (c) Class
27

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

Representative Service Payment, and (d) the PAGA Penalties payment to the LWDA and the Aggrieved Employees. The Settlement is all-in with no reversion to Defendant and no need to submit a claim form. Decl. Nordrehaug at ¶3.

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

\$575,000	(Gross Settlement Amount)
- \$12,500	(Plaintiff's proposed service award not to exceed amount)
- \$20,000	(Class Counsel Litigation Expenses Payment - not to exceed amount)
- \$191,666	(Class Counsel Fees Payment - not to exceed 1/3 of settlement)
- \$15,000	(PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
- \$12,000	(Administration Expenses Payment - not to exceed amount)
\$323,834	(Net Settlement Amount)

Based upon 328 Class Members who collectively worked 25,020 Workweeks (Agreement at ¶4.1), the Gross Settlement Amount provides an average value of \$1,753 per Class Member and \$22 per Workweek and after deductions the Net Settlement Amount provides an average recovery of \$987.29 per Class Member and a recovery of \$12.94 per Workweek. Decl. Nordrehaug at ¶6.

On June 7, 2023, the Parties participated in an all-day mediation session presided over by Tripper Ortman, a respected and experienced mediator of wage and hour class actions. Following the mediation, the Parties agreed on the basic terms of a settlement pursuant to a mediator's proposal which was memorialized in the form of a Memorandum of Understanding. Decl. Nordrehaug at ¶5. The Settlement is fair, reasonable and adequate, and should be preliminarily approved because there is a substantial monetary payment, and there are significant litigation and class-certification risks. Therefore, Plaintiff respectfully requests that this Court grant preliminary approval of the Agreement and enter the proposed order submitted herewith.

II. DESCRIPTION OF THE SETTLEMENT

The Gross Settlement Amount is Five Hundred Seventy-Five Thousand Dollars (\$575,000). (Agreement at ¶ 1.22.) Under the Settlement, the Gross Settlement Amount consists of the following elements: (1) payment of the Individual Class Payments to the Participating Class Members; (2) Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (3) Administration Expenses Payment; (4) the Class Representative Service Payment to Plaintiff; and (5) the PAGA Penalties payment. (Agreement at ¶ 1.22.) The Gross Settlement Amount does not include Defendant's share

1 of payroll taxes. (Agreement at ¶ 3.1.) The Gross Settlement Amount shall be all-in with no reversion
2 to Defendants. (Agreement at ¶ 3.1.) Decl. Nordrehaug at ¶15.

3 Within fifteen (15) days of the Effective Date, Defendant shall deposit the Gross Settlement
4 Amount with the Administrator. (Agreement at ¶ 4.3.) The distribution of Individual Class Payments
5 to Participating Class Members along with the other Court-approved distributions shall be made by the
6 Administrator within fourteen (14) days after Defendant funds the Gross Settlement Amount.
7 (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 (called the "Net Settlement Amount") shall be allocated to Class
12 Members as their Individual Class Payments. (Agreement at ¶¶ 1.23, 1.28 and 3.2.) From the Net
13 Settlement Amount, the Individual Class Payment for each Participating Class Member will be
14 calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by
15 all Participating Class Members during the Class Period and (b) multiplying the result by each
16 Participating Class Member's Workweeks. (Agreement at ¶ 3.2(e).) Workweeks will be based on
17 Defendant's records, however, Class Members will have the right to challenge the 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.) The Class Notice Packet will include an Exclusion Form and an
21 Objection Form. (Agreement at ¶¶ 8.5(a), 8.7(b), Ex. A.) All Class Members who do not "opt out" will
22 be deemed Participating Class Members who will be bound by the Settlement and will be entitled to
23 receive an Individual Class Payment. (Agreement at ¶ 8.5(c).) All Aggrieved Employees, including
24 those who submit an opt-out request, will still be paid their allocation of the PAGA Penalties and will
25 remain subject to the release of the Released PAGA Claims regardless of any 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 from such uncashed checks will be sent to the California Controller's
4 Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject
5 to the requirements of California Code of Civil Procedure Section 384, subd. (b). (Agreement at ¶ 5.4.)
6 Class Members can then claim their funds through the Controller's website. Decl. 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 \$12,000. (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 \$20,000. (Agreement at ¶ 3.2(b).) Subject
14 to Court approval, the Agreement provides for a payment of no more than \$12,500 to the Plaintiff as
15 the Class Representative Service Payment. (Agreement at ¶ 3.2(a).) Decl. Nordrehaug at ¶21.

16 Subject to Court approval, the PAGA Penalties will be paid from the Gross Settlement Amount
17 for PAGA penalties under the California Private Attorneys General Act, Cal. Labor Code Section 2698,
18 *et seq.* ("PAGA"). The PAGA Penalties are \$15,000. (Agreement at ¶¶ 1.34 and 3.2(d).) Pursuant to
19 the express requirements of Labor Code § 2699(i), the PAGA Payment shall be allocated as follows:
20 75% shall be allocated to the Labor Workforce Development Agency ("LWDA") as its share of the civil
21 penalties and and 25% allocated to the Individual PAGA Payments to be distributed to the Aggrieved
22 Employees based on the number of their respective PAGA Pay Periods. (Agreement at ¶ 3.2(d).) As
23 set forth in the accompany proof of service, the LWDA has been served with this motion and the
24 Agreement. Decl. 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 over more than a year which

permitted Class Counsel to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and 14. The Parties participated in mediation on June 7, 2023 with Tripper Ortman, which after arms' length negotiations during the mediation, resulted in this Settlement. Decl. Nordrehaug, ¶12.

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

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

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

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

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

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

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

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

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

1 settlement, the amount is “not to be judged against a hypothetical or speculative measure of what might
2 have been achieved by the negotiators.” *Officers for Justice*, 688 F.2d at 625, 628.

3 With regard to class action settlements, the opinions of counsel should be given considerable
4 weight both because of counsel’s familiarity with this litigation and previous experience with cases
5 such as these. *Officers for Justice*, 688 F.2d at 625. As a result, courts hold that the recommendation
6 of counsel is entitled to significant weight. *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221
7 F.R.D. 523, 528 (C.D. Cal. 2004).

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

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

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

22 This settlement is the result of extensive and hard-fought litigation as well as negotiations
23 before an experienced and well-respected mediator. The negotiations have been, at all times,
24 adversarial and non-collusive in nature. Defendant has expressly denied and continues to deny any
25 wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff and Class
26 Counsel have determined that it is desirable and beneficial to the Class to resolve the Released Class
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1 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 continue to place reliance on the competence and integrity of counsel, the involvement of a qualified
9 mediator, and the paucity of objectors to the settlement."); *Dunk*, 48 Cal. App. 4th at 1802.

10 The Parties attended an arms-length mediation session with Tripper Ortman, a respected and
11 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
12 for the mediation, Defendant provided Class Counsel with payroll and employment data and other
13 information regarding the Class Members, various internal documents, and other compensation and
14 employment-related materials. Class Counsel analyzed the data with the assistance of damages expert
15 Berger Consulting and prepared and submitted a mediation brief to the mediator. The final settlement
16 terms were negotiated and set forth in the Agreement now presented for this Court's approval. Decl.
17 Nordrehaug at ¶ 5. Importantly, Plaintiff and Class Counsel believe that this Settlement is fair,
18 reasonable and adequate. Class Counsel will be submitting this motion and the Agreement to the
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21 ³ The release applicable to the Class is appropriately tethered to allegations in the Action and the
22 "Released Class Claims" are narrowly defined as "all class claims pled or could have been pled under
23 state, federal or local law, whether statutory, common law or administrative law, based on the factual
24 allegations contained in the Operative Complaint, including claims under the Business & Professions
25 Code section 17200 et seq; the applicable Industrial Welfare Commission Wage Orders; claims for
26 minimum wage violations; failure to pay overtime wages; unreimbursed expenses; rest period
27 violations; meal period violations; failure to keep proper records; itemized wage statement violations;
28 failure to pay sick wages; waiting time penalties; unfair competition; and, claims for violations of Labor
Code sections 201-204, 210, 218, 221, 226, 226.3, 226.7, 227.3, 233, 246, 510, 512, 558, 2800, 2802,
1194, 1197, 1197.1, 1198, which occurred during the Class Period. 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, unemployment
insurance, disability, social security, workers' compensation, or claims based on facts occurring outside
the Class Period." (Agreement at ¶¶ 1.38 and 6.2.)

1 LWDA concurrently with the filing of this motion pursuant to Labor Code § 2699(1)(2). Decl.
2 Nordrehaug at ¶38.

3 Class Counsel conducted an investigation into the facts of the class action. Class Counsel
4 engaged in a thorough review and analysis of the relevant documents and data with the assistance of
5 an expert. Accordingly, the agreement to settle did not occur until Class Counsel possessed sufficient
6 information to make an informed judgment regarding the likelihood of success on the merits and the
7 results that could be obtained through further litigation. In addition, Class Counsel previously
8 negotiated settlements with other employers in actions involving nearly identical issues and analogous
9 defenses. Based on the foregoing data and their own independent investigation, evaluation and
10 experience, Class Counsel believes that the settlement with Defendant on the terms set forth in the
11 Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known
12 facts and circumstances, including the risk of significant delay, defenses asserted by Defendant, and
13 potential appellate issues. Decl. Nordrehaug at ¶ 14.

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

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

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

28 The proposed Settlement herein has no "obvious deficiencies" and is well within the range of

1 possible approval. All Class Members will receive an opportunity to participate in the Settlement and
2 receive payment according to the same formula. (Agreement at ¶ 3.2(e).) Based upon 328 Class
3 Members who collectively worked 25,020 Workweeks (Agreement at ¶4.1), the Gross Settlement
4 Amount provides an average value of \$1,753 per Class Member and \$22 per Workweek and after
5 deductions the Net Settlement Amount provides an average recovery of \$987.29 per Class Member and
6 a recovery of \$12.94 per Workweek. This means that a Class Member who worked the entire Class
7 Period (268 weeks) will have a net recovery of \$3,467, and a Class Member who worked only a single
8 week in the Class Period will have a net recovery of \$12.94. Decl. Nordrehaug, ¶6.

9 The calculations to compensate for the amount due for the Class at the time of the mediation
10 were calculated by Berger Consulting, Plaintiff's damage expert. As to the Class whose claims are at
11 issue in this Action, Plaintiff used this expert to analyze the data and determine the potential unpaid
12 wages for the employees. The maximum potential damages were calculated to be \$815,769 for the
13 potential unpaid wages due to alleged off-the-clock work, \$5,000 for the potential unpaid overtime,
14 meal period premiums and sick pay due to the miscalculation of the regular rate, \$107,821 for alleged
15 rest period damages based upon a 9.5% potential violation rate, \$31,295 for alleged unreimbursed
16 business expenses for personal cell phone usage at \$5 per month. Other than the alleged miscalculation
17 of the regular rate, the meal break claim for missed meal periods had nominal value because Defendant
18 established that it paid more meal period premiums than the number of violations apparent in the time
19 records. Decl. Nordrehaug, ¶6. As a result, the total damage valuation was calculated that Defendant
20 was subject to a maximum damage claim in the amount of \$959,884. As to potential penalties, Plaintiff
21 calculated that potential waiting time penalties were a maximum of \$879,214 and potential wage
22 statement penalties were \$532,000. Defendant vigorously disputed Plaintiff's calculations and
23 exposure theories. Decl. Nordrehaug, ¶6.

24 A number of defenses asserted by Defendant, however, present serious threats to the claims of
25 the Plaintiff and the other Class Members. Defendant asserted that Defendant's practices complied
26 with all applicable Labor laws. Defendant argued that Class Members were properly paid for all time
27 worked and that all work time was properly recorded. Defendants contend that their meal and rest
28 period policies fully complied with California law and Defendant did not fail to provide the opportunity

1 for legally required meal and rest breaks. Defendant contended that there was no failure to pay for
2 business expenses and any cell phone usage was merely convenient and voluntary such that
3 reimbursement was not legally required. Finally, Defendant could argue that the Supreme Court
4 decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), weakened Plaintiff's claims, on
5 liability, value, and class certifiability as to the meal and rest period claims. Defendant also argues that
6 based on its facially lawful practices, Defendant acted in good faith and without willfulness, which if
7 accepted would negate the claims for waiting time penalties and/or inaccurate wage statements. If
8 successful, Defendant's defenses could eliminate or substantially reduce any recovery to the Class.
9 While Plaintiff believes that these defenses could be overcome, Defendant maintains these defenses
10 have merit and therefore present a serious risk to recovery by the Class. Decl. Nordrehaug, ¶ 24.

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

20 In light of these uncertainties, the Gross Settlement Amount of \$575,000 is fair and reasonable.
21 This amount represents more than 59% of the maximum value of the alleged damages at issue in this
22 case at the time this Settlement was negotiated.⁴ In addition, the above maximum calculations should
23 then be adjusted in consideration for both the risk of class certification and the risk of establishing
24 class-wide liability on all claims. Given the amount of the settlement as compared to the potential value
25

26
27 ⁴ Because the PAGA claim is not a class claim and primarily is paid to the State of California,
28 Plaintiff has not included the PAGA claim in this discussion of the value of the class claims. The
PAGA claim is addressed in the Decl. Nordrehaug at ¶33.

1 of claims in this case and the defenses asserted by Defendant, this settlement is fair and reasonable.⁵
2 Clearly, the goal of this litigation has been met. Decl. Nordrehaug, ¶6.

3 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
4 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). After arm's length negotiations between
5 experienced and informed counsel, the Parties recognized the potential risks and agreed on the
6 Settlement with a Gross Settlement Amount of \$575,000. As the Court held in *Glass*, where the parties
7 faced uncertainties similar to those here:

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

14 2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
15 (9th Cir. 2000)).

16 3. The Settlement Does Not Improperly Grant Preferential Treatment To 17 Class Representatives or Segments Of The Class

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

23 Plaintiff will apply to the Court for Class Representative Service Payment in consideration for

24 ⁵ See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a
25 settlement where the settlement amount constituted approximately 25% of the estimated overtime
26 damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12
27 (N.D. Cal. 2015) (granting final approval where "the proposed Total Settlement Amount represents
28 approximately 10% of what class might have been awarded had they succeeded at trial."); *Dunleavy*
v. Nadler (In re Mego Fin. Corp. Sec. Litig.), 213 F.3d 454, 459 (9th Cir. 2000) (affirming approval
of a class settlement which represented "roughly one-sixth of the potential recovery".) See also *Viceral*
v. Mistras Grp., Inc., 2016 WL 5907869 (N.D. Cal. 2016) (approving wage and hour class action
settlement amounting to 8.1% of full value); *Ma v. Covidien Holding, Inc.*, 2014 WL 2472316, (C.D.
Cal. 2014) (approving wage and hour class action settlement worth "somewhere between 9% and 18%"
of maximum valuation).

1 his service and for the risks undertaken on behalf of the Class. (Agreement at ¶ 3.2(a).) Plaintiff
2 performed his duties admirably by working with Class Counsel for over a year. The Declaration of the
3 Plaintiff is submitted herewith in support. Decl. Nordrehaug at ¶27. At this stage, the requested service
4 award of \$12,500 is well within the accepted range of awards for purposes of preliminary approval.
5 See e.g. *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding
6 \$12,500 where average class member payment was \$351); *Holman v. Experian Info. Solutions, Inc.*,
7 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014) (approving \$10,000 service award where class
8 member recovery was \$375); *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008 WL 4473183, *7
9 (S.D.Cal. Oct. 06, 2008) (awarding \$25,000 service award to each of six plaintiffs in overtime class
10 action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D.Cal. Jan. 27 2007) (awarding
11 \$25,000 service award in overtime class action and a pool of \$100,000 in enhancements). As
12 explained in *Glass*, service awards are routinely awarded to class representatives to compensate the
13 employees for the time and effort expended on the case, for the risk of litigation, for the fear of suing
14 an employer and retaliation there from, and to serve as an incentive to vindicate the statutory rights of
15 all employees. 2007 WL 221862 at *16-17.

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

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

27 Based on the foregoing data and their own independent investigation and evaluation, Class
28 Counsel is of the opinion that the Settlement with Defendant for the consideration and on the terms set

1 forth in the Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light
2 of all known facts and circumstances, including the risk of significant delay, defenses asserted by
3 Defendant, and numerous potential appellate issues. There can be no doubt that Counsel for both
4 parties possessed sufficient information to make an informed judgment regarding the likelihood of
5 success on the merits and the results that could be obtained through further litigation. Decl.
6 Nordrehaug at ¶29.

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

8 Certification is appropriate when the moving party has demonstrated the existence of an
9 ascertainable class and a well-defined community of interest among the class. *See, e.g., Brinker*
10 *Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004, 1021 (2012). Plaintiff contends that the proposed
11 settlement meet all of the requirements for class certification under California Code of Civil Procedure
12 § 382 as demonstrated below, and therefore, the Court may appropriately approve the Class as defined
13 in the Agreement. This Court should conditionally certify the Class for settlement purposes only,
14 defined as follows:

15 All individuals who are or previously worked for Defendant in California who were
16 classified as non-exempt at any time during the Class Period.

17 (Agreement at ¶ 1.5.)

18 The Class Period is July 21, 2018 through September 8, 2023. (Agreement at ¶ 1.13.)

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

20 Plaintiff seeks certification of this Class for settlement purposes under California Code of Civil
21 Procedure § 382. The California Supreme Court has summarized the standard for determining whether
22 class certification is appropriate as follows:

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

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

28 Defendant does not dispute, for settlement purposes only, that all of the elements for class

1 certification are met here. Defendant does not concede that certification is appropriate outside of this
2 Settlement and preserves all rights to oppose certification if, for any reason, the settlement does not
3 become effective. While Defendant reserves all rights to dispute that the Plaintiff can satisfy these
4 requirements, the Parties agree that Defendant will not dispute that these requirements may be satisfied
5 in this case for purposes of settlement only and therefore, the proposed Class should be certified for
6 purposes of settlement only. (Agreement at ¶ 2.7.)

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

8 Plaintiff brings this action on behalf of a Class of exempt employees of Defendant during the
9 Class Period. Plaintiff asserts that all of these individuals are ascertainable because the class members
10 can readily be determined through examination of Defendant's files. Given that the Class consists of
11 328 members, Plaintiff maintains that numerosity is clearly satisfied. *See Bowles v. Superior Court*,
12 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose v. City of Hayward*, 126
13 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.) Here, Plaintiff
14 asserts that the 328 current and former employees that comprise the Class can be identified based on
15 Defendant's records and are sufficiently numerous for class certification. Decl. Nordrehaug at ¶30.

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

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

22 Commonality exists if there is a predominant common legal question regarding how an
23 employer's policies impact its employees. *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524,
24 1536 (2008) ("[T]he common legal question remains the overall impact of Diva's policies on its
25 drivers.") Whether the plaintiff is likely to prevail on their theory of recovery is irrelevant at the
26 certification stage since the question is "essentially a procedural one that does not ask whether an action
27 is legally or factually meritorious." *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2003).

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

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

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

18 In this Action, Plaintiff contends that the typicality requirement is fully satisfied. Plaintiff, like
19 every other member of the Class, was employed by Defendant as a non-exempt employee during the
20 Class Period, and, like every other member of the Class, was subject to the same employment practices.
21 Plaintiff, like every other member of the Class, also claims owed compensation as a result of the
22 Defendant's uniform company policies and practices. Thus, the claims of Plaintiff and the members
23 of the Class arise from the same course of conduct by Defendant, involve the same issues, and are based
24 on the same legal theories. Decl. Nordrehaug at ¶30. For purposes of settlement, Plaintiff asserts that
25 the typicality requirement is met as to the common issues presented in this case. Defendant does not
26 oppose a finding of typicality for purposes of this Settlement only.

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

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

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

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

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

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

1 Here, Plaintiff contends that a class action is the superior mechanism for resolution of the claims
2 as pled by the Plaintiff. While Defendant disputes that class treatment is superior, Defendant does not
3 dispute a finding of superiority in this action for purposes of this Settlement only.

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

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

12 The Class Notice, drafted jointly and agreed upon by the Parties through their respective counsel
13 and to be approved by the Court, includes all relevant information. (See Exhibit “A” to the Agreement.)
14 The Class Notice will include, among other information: (i) information regarding the Action; (ii) the
15 impact on the rights of the Class Members if they do not opt out, including a description of the
16 applicable release; (iii) information to the Class Members regarding how to opt out and how to object
17 to the Settlement; (iv) the estimated Individual Class Payment for each of the Class Members; (iii) the
18 amount of attorneys’ fees and expenses to be sought; (v) the amount of the Plaintiff’s service award
19 request; and (vi) the anticipated expenses of the Administrator. An Objection form and a Request for
20 Exclusion form will accompany the Class Notice, the forms of which are part of Exhibit A to the
21 Agreement. The Class Notice Packet will include a Spanish translation. (Agreement at ¶ 1.11.) Decl.
22 Nordrehaug at ¶32.

23 The Class Notice will state that the Class Members shall have sixty (60) days from the date that
24 the Notice is mailed to them (the “Response Deadline”) to request exclusion (opt-out) or to submit a
25 written objection. (Agreement at ¶¶ 1.42, 8.5, 8.7.) In the event of a re-mailing, the Response Deadline
26 will be extended by an additional 14 days. (Id.) Class Members shall be given the opportunity to object
27 to the Settlement and/or requests for attorneys’ fees and expenses and to appear at the Final Approval
28 Hearing. (Agreement at ¶ 8.7.) Class Members who do not submit a timely and proper request to opt-

1 out will automatically receive a payment of their Individual Class Payment. This notice program was
2 designed to meaningfully reach the Class Members and it advises them of all pertinent information
3 concerning the Settlement. Decl. Nordrehaug at ¶32. The mailing and distribution of the Class Notice
4 satisfies the requirements of due process and is the best notice practicable under the circumstances and
5 complies with Rules of Court 3.766 and 3.769(f).

6 **VII. CONCLUSION**

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

11 Dated: October 18, 2023

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

12 By: /s/ Kyle Nordrehaug
13 Kyle R. Nordrehaug, Esq.
14 Attorney for Plaintiff
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