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

14 **IN AND FOR THE COUNTY OF LOS ANGELES**

15 REBEKAH DIAZ, RANDI STENSBERG,
16 RAFAEL URIBE, and VIRGINIA
17 ZEBLEY, individuals, on behalf of
18 themselves and on behalf of all persons
19 similarly situated,

20 Plaintiff,

21 vs.

22 LOYAL SOURCE GOVERNMENT
23 SERVICES LLC, a limited liability
24 company; and DOES 1 through 50,
25 inclusive,

26 Defendants.

Case No. 22STCV15413

[consolidated with Case No. 22STCV22205]

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

Hearing Date: October 4, 2023

Hearing Time: 10:30 a.m.

Judge: Hon. Stuart M. Rice

Dept: SS-1

Date Filed: May 10, 2022

Trial Date: Not set

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1 **I. INTRODUCTION**

2 Plaintiffs Rebekah Diaz, Randi Stensberg, Rafael Uribe, and Virginia Zebley (“Plaintiffs”) will
3 move for an order: (1) preliminarily approving the proposed settlement of this class action with
4 Defendant Loyal Source Government Services LLC (“Defendant”); (2) for settlement purposes only,
5 conditionally certifying the Class, which is comprised of “all individuals who are or previously were
6 employed by Defendant in California who were classified as hourly, non-exempt employees at any time
7 during the Class Period, but excluding individuals who: (a) were hired on or before September 29, 2020,
8 (b) have not worked for Defendant in California at any time since on or after January 29, 2021, and (c)
9 were "Participating Class Members" in the settlement of the consolidated matters of *Ortega, et al. v.*
10 *Loyal Source Government Services, LLC*, Case No. 3:20-cv-00879 and *Ortega v. Loyal Source*
11 *Government Services, LLC*, Case No. 3:20-cv-01173 (the “*Ortega Settlement*”); (3) provisionally
12 appointing Plaintiffs as the representatives of the Class; (4) provisionally appointing Norman B.
13 Blumenthal, Kyle R. Nordrehaug, and Aparajit Bhowmik of Blumenthal Nordrehaug Bhowmik De
14 Blouw LLP as Class Counsel for the Class; (5) approving the form and method for providing notice to
15 the Class of the proposed settlement; (6) directing that notice of the proposed settlement be given to the
16 Class; (7) appointing ILYM Group, Inc. as the Administrator; and (8) scheduling a final approval hearing
17 date in approximately four months to consider the Plaintiffs’ motion for final approval of the settlement
18 and entry of the Judgment, and Plaintiffs’ motion for approval of attorneys' fees and expenses. Plaintiffs
19 and Defendant have reached a full and final settlement of the above-captioned action, which is set forth
20 in the Class Action and PAGA Settlement Agreement (the “Agreement”) filed concurrently with the
21 Court.¹ A copy of the fully executed Agreement is attached as Exhibit #1 to the Declaration of Kyle
22 Nordrehaug (“Decl. Nordrehaug”), served and filed herewith, and the form of the Agreement is based
23 on the Los Angeles Superior Court model form for class and PAGA settlements. A redline comparison
24 between the Agreement and the Court’s model form for a class and PAGA settlement is attached as
25 Exhibit #2 to the Decl. Nordrehaug.

26
27
28 ¹ Capitalized terms shall have the same meaning as defined in the Agreement.

1 As consideration for this Settlement, the Gross Settlement Amount is One Million Nine Hundred
2 Fifty Thousand Dollars (\$1,950,000) to be paid by Defendant, as set forth in the Agreement. The Gross
3 Settlement Amount will settle all issues pending in the Action between the Parties and will be made in
4 full and final settlement of the released claims. The Gross Settlement Amount includes all payments of
5 Individual Class Payments to the Participating Class Members, the Administration Expenses Payment
6 to the Administrator, the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment
7 to Class Counsel, the Class Representative Service Payments to Plaintiffs, and the PAGA Penalties
8 payment to the California Labor and Workforce Development Agency (the “LWDA”) and the Aggrieved
9 Employees. The Gross Settlement Amount does not include the employer’s share of payroll taxes which
10 will be separately paid by Defendant. The Settlement is all-in with no reversion to Defendant and no
11 need for Class Members to submit claim forms. Decl. Nordrehaug at ¶3.

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

13 **\$1,950,000** (Gross Settlement Amount)

- 14 - \$40,000 (Plaintiffs’ proposed service award not to exceed \$10,000 each)
- 15 - \$25,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- 16 - \$650,000 (Class Counsel Fees Payment - not to exceed one-third of settlement)
- 17 - \$50,000 (PAGA Penalties - 75% to LWDA / 25% to Aggrieved Employees)
- 18 - \$20,000 (Administration Expenses Payment - not to exceed amount)

19 **\$1,165,000** (Net Settlement Amount)

20 Based upon 1,111 Class Members who collectively worked 30,302 Workweeks, the Gross Settlement
21 Amount provides a value of \$1,755 per Class Member and \$64 per Workweek and, after deductions,
22 the Net Settlement Amount provides an average recovery of \$1,048.60 per Class Member and \$38.44
23 per Workweek. Decl. Nordrehaug at ¶6.

24 On January 20, 2023, the Parties participated in an all-day mediation session presided over by
25 David Rotman, Esq., a respected and experienced mediator of wage and hour class actions. Following
26 this mediation, the Parties reached an agreement to settle the Action. Decl. Nordrehaug at ¶5. The
27 Settlement is fair, reasonable and adequate, and should be preliminarily approved because there is a
28 substantial monetary payment, and there are substantial litigation and class-certification risks. Therefore,
Plaintiffs respectfully request that this Court grant preliminary approval of the Agreement and enter the
proposed order submitted herewith.

1 **II. DESCRIPTION OF THE SETTLEMENT**

2 The Gross Settlement Amount is One Million Nine Hundred Fifty Thousand Dollars
3 (\$1,950,000). (Agreement at ¶ 1.22.) Under the Settlement, the Gross Settlement Amount consists of
4 the following elements: (i) all Individual Class Payments and Individual PAGA Payments; (ii) the LWDA
5 PAGA Payment; (iii) the Class Counsel Fees Payment and the Class Counsel Litigation Expenses
6 Payment; (iv) the Class Representative Service Payments; and (v) the Administration Expenses Payment.
7 (Agreement at ¶ 1.22.) The Gross Settlement Amount does not include Defendant's share of payroll
8 taxes. (Agreement at ¶ 3.1.) The Gross Settlement Amount shall be all-in with no reversion to
9 Defendant. (Agreement at ¶ 3.1.) Decl. Nordrehaug at ¶15.

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

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

26 Class Members may choose to opt-out of the Settlement by following the directions in the Class
27 Notice. (Agreement at ¶ 8.5, Ex. A.) All Class Members who do not "opt out" will be deemed
28

1 Participating Class Members and will be bound by the Settlement and will be entitled to receive an
2 Individual Class Payment. (Agreement at ¶ 8.5(c).) All Aggrieved Employees, including any who
3 submit an opt-out request, still will receive an Individual PAGA Payment and will release of the Released
4 PAGA Claims regardless of their request for exclusion. (Agreement at ¶¶ 6.3 and 8.5(d)) Finally, the
5 Class Notice will advise the Class Members of their right to object to the Settlement and/or dispute their
6 Workweeks. (Agreement at ¶¶ 8.6 and 8.7, Ex. A.) Decl. Nordrehaug at ¶18.

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

13 Subject to Court approval, the Parties have agreed on ILYM Group to administer the settlement
14 in this action (the "Administrator"). (Agreement at ¶ 1.2.) The Administrator will be paid for settlement
15 administration in an amount not to exceed \$20,000. (Agreement at ¶ 3.2(c).) Decl. Nordrehaug at ¶20.
16 The Declaration from ILYM is submitted herewith. See Decl. Nordrehaug at ¶37 and Exhibit #5.

17 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
18 to exceed one-third of the Gross Settlement Amount as the Class Counsel Fees Payment. (Agreement
19 at ¶ 3.2(b).) Class Counsel will also be allowed to apply for an award of Class Counsel Litigation
20 Expenses Payment in an amount not to exceed \$25,000. (Agreement at ¶ 3.2(b).) Subject to Court
21 approval, the Agreement provides for a payment of no more than \$10,000 each to Plaintiffs as the Class
22 Representative Service Payments. (Agreement at ¶ 3.2(a).) Decl. Nordrehaug at ¶21.

23 Subject to Court approval, Fifty Thousand Dollars (\$50,000) will be paid from the Gross
24 Settlement Amount in settlement of Plaintiffs' claim for civil penalties under the California Labor Code
25 Private Attorneys General Act ("PAGA"), Cal. Labor Code Section 2698, *et seq.* Pursuant to the
26 express requirements of Labor Code § 2699(i), the PAGA Penalties payment shall be allocated as
27 follows: 75% (\$37,500) shall be allocated to the LWDA as its share of the civil penalties and 25%
28

1 (\$12,500) allocated to the Aggrieved Employees and distributed as Individual PAGA Payments based
2 on the number of their respective PAGA Pay Periods. (Agreement at ¶ 3.2(d).) As set forth in the
3 accompanying proof of service, the LWDA has been served with this motion and the Agreement. Decl.
4 Nordrehaug at ¶22.

5 **III. CASE BACKGROUND**

6 The description of the case and claims, along with the procedural history, is set forth in the
7 Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and an
8 informal exchange of documents and information in connection with the Action which permitted Class
9 Counsel to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and 14. The Parties
10 participated in private mediation on January 20, 2023 with David Rotman, Esq., which after arm's length
11 negotiations, resulted in this Settlement. Decl. Nordrehaug, ¶12.

12 **IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO 13 GRANT PRELIMINARY APPROVAL**

14 When a proposed class-wide settlement is reached, the settlement must be submitted to the court
15 for approval. 2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) at §11.41, p.11-87.
16 California "[p]ublic policy generally favors the compromise of complex class action litigation."
17 *Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 581 (2010) quoting *Cellphone Termination Fee*
18 *Cases*, 180 Cal.App.4th 1110, 1117-18 (2009). Class action settlements are approved where the
19 proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
20 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982), *cert.*
21 *denied*, 459 U.S. 1217 (1983)).

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

28 The primary question presented on an application for preliminary approval of a proposed class

1 action settlement is whether the proposed settlement is “within the range of possible approval.” *Manual*
2 *for Complex Litigation*, Second §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir.
3 1982).² Preliminary approval is merely the prerequisite to giving notice so that “the proposed
4 settlement... may be submitted to members of the prospective Class for their acceptance or rejection.”
5 *Sayaman v. Baxter Healthcare Corp.*, 2010 U.S. Dist. LEXIS 151997, *3 (C.D. Cal. 2010). There is
6 “a presumption of fairness . . . where . . . [a] settlement is reached through arms-length bargaining.”
7 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 245 (2001) (citation omitted); *see also Cho v.*
8 *Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th 734, 742-45 (2009) (upholding trial court’s
9 determination that settlement was “fair, reasonable and adequate” where the settlement “provided
10 valuable benefits to the class . . . that were ‘particularly valuable in light of the risks plaintiff would have
11 faced if she proceeded to litigate her case.’”); *Newberg*, 3d Ed., §11.41, p.11-88. However, the ultimate
12 question of whether the proposed settlement is fair, reasonable and adequate is made after notice of the
13 settlement is given to the class members and a final settlement hearing is held by the Court.

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

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

22 In considering a potential settlement for preliminary approval purposes, the trial court need not
23 reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute, and
24

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

1 need not engage in a trial on the merits. *Wershba, supra*, 91 Cal.App.4th at 239-40; *Dunk, supra*, 48
2 Cal.App. 4th at 1807. The Ninth Circuit explains, “the very essence of a settlement is compromise, ‘a
3 yielding of absolutes and an abandoning of highest hopes.’” *Officers for Justice*, 688 F.2d at 624. The
4 question whether a proposed settlement is fair, reasonable and adequate necessarily requires a judgment
5 and evaluation by the attorneys for the parties based upon a comparison of “the terms of the
6 compromise with the likely rewards of litigation.” *Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir.
7 1982), *cert. denied* 464 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders of TMT*
8 *Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)). Thus, when analyzing the settlement,
9 the amount is “not to be judged against a hypothetical or speculative measure of what might have been
10 achieved by the negotiators.” *Officers for Justice*, 688 F.2d at 625, 628.

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

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

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

27 If the proposed settlement appears to be the product of serious, informed, noncollusive
28 negotiations, has no obvious deficiencies, does not improperly grant preferential

1 treatment to class representatives or segments of the class, and falls within the range of
2 possible approval, then the court should direct that notice be given to the class members
3 of a formal fairness hearing, at which evidence may be presented in support of and in
4 opposition to the settlement.

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

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

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

9 The Settlement is the result of extensive and hard-fought litigation as well as negotiations before
10 an experienced and well-respected mediator. Defendant has expressly denied and continues to deny any
11 wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiffs and Class
12 Counsel have determined that it is desirable and beneficial to the Class to resolve the Released Class
13 Claims in accordance with the Settlement.³

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

22 The Parties attended an arms-length mediation session with David Rotman, a respected and
23 experienced mediator of wage and hour class actions, in order to reach the Settlement. In preparation

24 ³ The release applicable to the Class is tethered to allegations in the Action as the "Released Class
25 Claims" are "all claims that were alleged, or reasonably could have been alleged, under federal, state,
26 or local law arising out of or related to the facts stated in the Operative Complaint which occurred
27 during the Class Period, including all causes of action pled in the Operative Complaint. Except as
28 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 for the mediation, Defendant provided Class Counsel with necessary information, including data for the
2 Class. Plaintiffs analyzed the data with the assistance of a damages expert, Berger Consulting, and
3 prepared and submitted a mediation brief and damage valuation to the Mediator. Following the all-day
4 mediation, the Parties agreed to the Settlement, which was memorialized in the form of a Memorandum
5 of Understanding. The final terms of the Settlement were negotiated and set forth in the Agreement now
6 presented for this Court's approval. Decl. Nordrehaug at ¶ 5. Importantly, Plaintiffs and Class Counsel
7 believe that this Settlement is fair, reasonable and adequate.

8 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant is
9 One Million Nine Hundred Fifty Thousand Dollars (\$1,950,000). The Settlement is all-in with no
10 reversion to Defendant and no need for Class Members to submit claim forms. Decl. Nordrehaug at ¶3.

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

22 Plaintiffs and Class Counsel recognize the expense and length of continuing to litigate and trying
23 this Action against Defendant and then litigating possible appeals that could take several years. Class
24 Counsel has also taken into account the uncertain outcome and risk of litigation, especially in complex
25 class actions such as this Action. Class Counsel is also mindful of and recognizes the inherent problems
26 of proof under, and alleged defenses to, the claims asserted in the Action. Based upon their evaluation,
27 Plaintiffs and Class Counsel have determined that the Settlement set forth in the Agreement is in the best
28

1 interest of the Class Members. Decl. Nordrehaug, ¶ 23.

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

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

9 The proposed Settlement has no "obvious deficiencies" and is well within the range of possible
10 approval. All Class Members will receive an opportunity to participate in the Settlement and receive
11 payment according to the same formula. (Agreement at ¶ 3.2(e).) Based upon 1,111 Class Members
12 who collectively worked 30,302 Workweeks, the Gross Settlement Amount provides a value of \$1,755
13 per Class Member and \$64 per Workweek and, after deductions, the Net Settlement Amount provides
14 an average recovery of \$1,048.60 per Class Member and \$38.44 per Workweek. Decl. Nordrehaug, ¶6.

15 The calculations to compensate for the amount due to the Class Members at the time the
16 Settlement was negotiated were calculated by Plaintiffs’ expert, Berger Consulting, in advance of
17 mediation. Class Counsel analyzed the data for putative class members and determined the potential
18 maximum damages for the class claims. For the Class, the maximum value of the claim for unpaid wages
19 due to the alleged miscalculation of the regular rate applicable to overtime pay, meal premiums and sick
20 pay was \$908,683, the maximum value of the claim for unpaid wages due to alleged off-the-clock work
21 for COVID checks was \$230,378, the maximum potential damages for alleged meal period violations
22 were estimated to be \$2,632,955 based upon a 28% violation rate observed in the time records and after
23 deduction of meal premiums paid, the maximum potential damages for alleged rest period violations
24 were estimated to be \$2,672,487 based upon the same 28% violation rate, and the maximum potential
25 damages for the alleged failure to reimburse business expenses were calculated to be \$37,500. In total,
26 the damages for the Class were calculated to have a maximum potential total value of \$6,482,003. In
27 addition, Plaintiff calculated that the maximum value of the potential waiting time penalties were between
28 \$2,872,844 and \$9,344,998, depending on the predicate unpaid wage giving rise to the waiting time

1 penalty, and the maximum value of the potential wage statement penalties were between \$598,300 and
2 \$1,783,050, depending on the predicate violation.⁴ Decl. Nordrehaug, ¶6.

3 Consequently, the Gross Settlement Amount represents more than 30% of Plaintiffs' calculation
4 of the potential maximum damages at issue for the Class in this case, assuming these amounts could all
5 be proven in full at trial.⁵ Importantly, the wage claims were valued based upon 42,923 workweeks,
6 however the final actual workweek figure was 30,302, which means the actual a more accurate valuation
7 would be 70% of the above calculations, which would adjust the maximum damages to \$4,548,615. The
8 maximum calculations should then be realistically risk rated in consideration for both the risk of class
9 certification and the risk of establishing class-wide liability on all claims. Given the amount of the
10 Settlement as compared to the potential value of the claims, the Settlement is most certainly fair and
11 reasonable.⁶ Clearly, the goal of this litigation has been met. Decl. Nordrehaug, ¶6.

12 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
13 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
14 Defendant present serious threats to the claims of the Plaintiff and the other Class Members. Defendant
15

16 ⁴ While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and 226,
17 at mediation Plaintiff recognized that these claims were subject to additional, separate defenses asserted
18 by Defendants, 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,
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.").

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

23 ⁶ *See Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)
24 approving settlement which represented "roughly one-sixth of the potential recovery"); *Stovall-Gusman*
25 *v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval
26 where "the proposed Total Settlement Amount represents approximately 10% of what class might have
27 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*
28 *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 maintains that its practices complied with all applicable wage and hour laws. Defendant maintains that
2 all Class Members' work time was properly recorded and compensated and that there was no
3 miscalculation of the regular rate. Defendant contends that its meal and rest period policies and practices
4 provide Class Members with meal and rest periods and that the payment of meal premiums is evidence
5 of Defendant's legal compliant practices. As to expense reimbursement, Defendant maintains that it did
6 not fail to provide reimbursement for necessary business expenses because, among other things,
7 employees are not required to use their personal cell phones to perform their work. Defendant could
8 argue that the decisions in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), *Lockheed Martin Corp.*
9 *v. Superior Ct.*, 29 Cal. 4th 1096, 1108 (2003), and *Salazar v. See's Candy Shops Inc.*, 64 Cal.App.5th
10 85 (2021), weakened Plaintiffs' claims in terms of liability and value, and preclude his claim from
11 proceeding on a class or representative basis. Defendant also maintains that a good faith dispute and
12 absence of willfulness would negate the claims for waiting time penalties and/or failure to provide
13 accurate itemized wage statements. Defendant also argued that the existence of arbitration agreements
14 with Class members would preclude a class-wide recovery at trial. If successful, Defendant's defenses
15 could eliminate or substantially reduce any recovery to the Class. While Plaintiffs believe that these
16 defenses could be overcome, Defendant maintains these defenses have merit and therefore present a
17 serious risk to recovery by the Class. Decl. Nordrehaug, ¶ 24.

18 There was also a significant risk that, if the Action was not settled, Plaintiffs would be unable to
19 obtain class certification and thereby not recover on behalf of any employees other than themselves.
20 Defendant argued that the individual experience of each putative class member varied with respect to
21 the claims, which would preclude the claims from proceeding on a class or representative basis. For
22 instance, Plaintiffs' meal and rest period claims would require individualized inquiries into whether each
23 employee took a compliant meal or rest period on a given shift and, if not, why. Plaintiffs are aware of
24 other cases where class certification of similar claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43
25 Cal. App. 5th 885 (2019) (denying certification of rest break claims). Finally, even if class certification
26 was successful, as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank*
27 *National Association*, 59 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class-wide
28

1 recovery even where a class has been certified. While other cases have approved class certification of
2 wage and hour claims, class certification in this Action would have been hotly disputed and was by no
3 means a foregone conclusion. Decl. Nordrehaug, ¶ 25.

4 After arm's-length negotiations between experienced and informed counsel, the Parties
5 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of
6 \$1,950,000.00. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

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

13 2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
14 (9th Cir. 2000)).

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

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

22 Plaintiffs will apply to the Court for Class Representative Service Payments in consideration for
23 their service and for the risks undertaken on behalf of the Class. (Agreement at ¶ 3.2(a).) Plaintiffs
24 performed their duties admirably by working with Class Counsel. Decl. Nordrehaug at ¶27. The
25 concurrently filed declarations of the Plaintiffs are presented herewith in support of the request. For
26 purposes of this preliminary approval stage, the requested service award of \$10,000 is well within the
27 accepted range of awards for purposes of preliminary approval. *See, e.g., Mathein v. Pier 1 Imps.*
28 *(U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500 where average class
member payment was \$351); *Holman v. Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698
(N.D. Cal. 2014) (approving \$10,000 service award where class member recovery was \$375); *Louie v.*

1 *Kaiser Foundation Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D.Cal. 2008) (awarding \$25,000
2 service award to each of six plaintiffs in overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL
3 221862, *16-17 (N.D.Cal. 2007) (awarding \$25,000 service award in overtime class action and a pool
4 of \$100,000 in enhancements). As explained in *Glass*, service awards are routinely awarded to class
5 representatives to compensate them for the time and effort expended on the case, for the risk of
6 litigation, for the fear of suing an employer and retaliation therefrom, and to serve as an incentive to
7 vindicate the statutory rights of all employees. 2007 WL 221862 at *16-17.

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

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

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

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

28 Here, no formal discovery took place prior to settlement. As the Ninth Circuit has

1 observed, however, '[i]n the context of class action settlements, 'formal discovery is not
2 a necessary ticket to the bargaining table' where the parties have sufficient information
to make an informed decision about settlement.'"

3 *Glass*, 2007 U.S. Dist. LEXIS 8476 at *14 (quoting *In re Mego Financial Corp. Securities Litigation*,
4 213 F.3d at 459).

5 Here, Class Counsel was in a better position to evaluate the fairness of this Settlement because
6 Class Counsel received relevant documents and data through informal discovery, evaluated the
7 information with the assistance of an expert, and performed independent investigations and due diligence
8 to confirm the accuracy of the information supplied by Defendant.

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

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

14 All individuals who are or previously were employed by Defendant in California who
15 were classified as hourly, non-exempt employees at any time during the Class Period, but
16 excluding individuals who: (a) were hired on or before September 29, 2020, (b) have not
17 worked for Defendant in California at any time since on or after January 29, 2021, and
(c) were "Participating Class Members" in the settlement of the consolidated matters of
Ortega, et al. v. Loyal Source Government Services, LLC, Case No. 3:20-cv-00879 and
Ortega v. Loyal Source Government Services, LLC, Case No. 3:20-cv-01173.

18 (Agreement at ¶ 1.5.)

19 The "Class Period" is from September 29, 2020 through April 20, 2023. (Agreement at ¶ 1.13.)

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

21 The California Supreme Court has summarized the standard for determining whether class
22 certification is appropriate under California Code of Civil Procedure section 382 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, and
it is impracticable to bring them all before the court...." The party seeking certification
25 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
26 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
27 representatives who can adequately represent the class.

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

1 Plaintiffs contend that the proposed Class satisfies the criteria for certification under Code of
2 Civil Procedure section 382. Defendant disputes that Plaintiffs can satisfy any of these requirements for
3 class certification in the litigation context, but does not oppose certification for purposes of the
4 Settlement. Accordingly, the proposed Class should be certified for purposes of the Settlement only.
5 (Agreement at ¶ 2.7.)

6 **1. Ascertainability And Numerosity.**

7 Plaintiffs bring this Action on behalf of a Class of non-exempt employees who worked for
8 Defendant during the applicable Class Period. Plaintiffs assert that all of these individuals are
9 ascertainable because the class members can readily be determined through examination of Defendant's
10 files. Given that the Class consists of approximately 1,111 members, Plaintiffs maintain that numerosity
11 is clearly satisfied. *See Bowles v. Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members
12 sufficiently numerous); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of 48 members
13 satisfies numerosity requirement.) Here, Plaintiffs assert that the 1,111 individuals who comprise the
14 Class can be identified based on Defendant's records and are sufficiently numerous for class certification.
15 Decl. Nordrehaug at ¶30.

16 **2. Predominance of Common Issues Of Law and Fact.**

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 on*
19 *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 fact
21 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, Plaintiffs contend that common questions of law and fact are present, and specifically the
2 common questions of whether Defendant's practices were lawful, whether Class members were lawfully
3 compensated for all hours worked, whether Defendant properly calculated wages, whether the Defendant
4 failed to provide all legally required 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 alleged practices. Decl. Nordrehaug, ¶30.

7 **3. Typicality.**

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

14 In the Action, Plaintiffs contend that there can be little doubt that the typicality requirement is
15 satisfied. Plaintiffs worked for Defendant as a non-exempt employees during the Class Period. Plaintiffs
16 contend that, like every other member of the Class, they were subjected to the same practices and
17 policies of Defendant and are subject to the same defenses. Thus, Plaintiffs assert that the claims of
18 Plaintiffs and the Class Members arise from the same course of conduct by the Defendant, involve the
19 same employment policies and practices of Defendant, and are based on the same legal theories. Decl.
20 Nordrehaug at ¶30. For purposes of settlement, Plaintiffs maintain that the typicality requirement is met
21 as to the common issues presented in this case.

22 **4. Adequacy.**

23 Plaintiffs contend that the Class Members are adequately represented here because Plaintiffs and
24 Class Counsel (a) do not have any conflicts of interest with other Class members, and (b) will prosecute
25 the case vigorously on behalf of the Class. *Hanlon*, 150 F.3d at 1020. First, Plaintiffs are well aware
26 of their duties as the representative of the Class and have actively participated in the prosecution of this
27 case to date. Plaintiffs effectively communicated with counsel, provided documents to counsel, and
28

1 participated in the investigation and negotiations in the Action. Second, Plaintiffs retained competent
2 counsel who are experienced in employment class actions and who have no conflicts. Decl. Nordrehaug
3 at ¶ 31. Third, there is no antagonism between the interests of the Plaintiffs and those of the Class. Both
4 Plaintiffs and the Class Members seek monetary relief under the same set of facts and legal theories.

5 **5. Superiority.**

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

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

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

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

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

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

 The Class Notice, drafted jointly and agreed upon by the Parties through their respective counsel

1 and to be approved by the Court, includes all relevant information. (*See Exhibit “A” to the Agreement.*)
2 The Class Notice will include, among other information: (i) information regarding the Action; (ii) the
3 impact on the rights of the Class Members if they do not opt out, including a description of the
4 applicable release; (iii) information to the Class Members regarding how to opt out and how to object
5 to the Settlement; (iv) the estimated Individual Class Payment (and, if applicable, Individual PAGA
6 Payment) for each of the Class Members and how to dispute the information used to calculate the
7 payment; (iii) the amount of attorneys’ fees and expenses to be sought; (v) the amount of the Plaintiffs’
8 service award request; and (vi) the anticipated expenses of the Administrator. Decl. Nordrehaug at ¶32.

9 The Class Notice will state that the Class Members shall have forty-five (45) days from the date
10 that the Notice is mailed to them (the “Response Deadline”) to request exclusion (opt-out), and that the
11 Response Deadline shall be extended 14 days in the event of a re-mailing. (Agreement at ¶¶ 1.42,
12 8.5(a).) Class Members shall be given the opportunity to object to the Settlement and/or requests for
13 attorneys’ fees and expenses and to appear at the Final Approval Hearing. (Agreement at ¶ 8.7.) Class
14 Members who do not submit a timely and proper request to opt out will automatically receive a payment
15 of their Individual Class Payment (and, if applicable, their Individual PAGA Payment). This notice
16 program was designed to meaningfully reach the Class Members and it advises them of all pertinent
17 information concerning the Settlement. Decl. Nordrehaug at ¶32. The mailing and distribution of the
18 Class Notice satisfies the requirements of due process, is the best notice practicable under the
19 circumstances, and complies with Rules of Court 3.766 and 3.769(f).

20 **VII. CONCLUSION**

21 Based on the foregoing, the Parties respectfully request that the Court preliminarily approve the
22 proposed settlement and sign the proposed Preliminary Approval Order, which is submitted herewith,
23 and schedule the final fairness hearing for a date in approximately four months.

24 Dated: September 7, 2023

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Kyle Nordrehaug

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