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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

ERICA MORRIS, YOLANDA
ORTEGA-CALBERT, MARIBEL
BLANDINO, and DORETHA HUGHES,
individually, on behalf of themselves and on
behalf of all persons similarly situated,

Plaintiffs,

vs.

THE PERMANENTE MEDICAL GROUP,
INC., a California Corporation; and DOES 1
through 50, inclusive,

Defendants.

CASE NO.: **34-2022-00332012-CU-OE-GDS**
[Consolidated with Case No. 34-2022-00332023-
CU-OE-GDS]

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

Hearing Date: April 18, 2025

Hearing Time: 9:00 a.m.

Reservation # **A-332012-001**

Judge: Hon. Jill H. Talley

Dept: 23

Date Filed: December 28, 2022

Trial Date: Not set

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1 **I. INTRODUCTION**

2 Plaintiffs Erica Morris, Yolanda Ortega-Calbert, Maribel Blandino, and Doretha Hughes
3 (“Plaintiffs”) respectfully submit this memorandum in support of the unopposed motion for preliminary
4 approval of the proposed class action settlement with Defendant The Permanente Medical Group, Inc.
5 (“Defendant”), and seek entry of an order: (1) preliminarily approving the proposed settlement of this
6 class action with Defendant and approving the PAGA settlement; (2) for settlement purposes only,
7 conditionally certifying the Class, which is comprised of “all non-exempt persons who were employed
8 by Defendant in the State of California at any time during the Class Period,” which is January 1, 2021
9 through December 31, 2024; (3) provisionally appointing Plaintiffs as the Class Representatives for this
10 Class; (4) provisionally appointing Blumenthal Nordrehaug Bhowmik De Blouw LLP, James Hawkins
11 APLC, and Haffner Law PC as Class Counsel; (5) approving the form and method for providing class-
12 wide notice; (6) directing that notice of the proposed settlement be given to the class; (7) appointing
13 ILYM Group, Inc. as the Administrator, and (8) scheduling a final approval hearing date, proposed for
14 September 5, 2025, to consider Plaintiffs’ motion for final approval of the settlement and for approval
15 of attorneys’ fees and expenses. Plaintiffs and Defendant (collectively the “Parties”) have reached a
16 full and final settlement of the above-captioned action, which is embodied in the Class and
17 Representative Action Settlement Agreement (“Agreement”) filed concurrently with the Court.¹ A copy
18 of the fully executed Agreement is attached as Exhibit #1 to the Declaration of Kyle Nordrehaug (“Decl.
19 Nordrehaug”), served and filed herewith, and is based upon the Los Angeles Court’s model form. The
20 motion complies with the Court’s checklist, as detailed in paragraph 2 of the Decl. Nordrehaug.

21 As consideration for this Settlement, the non-reversionary Gross Settlement Amount of Eleven
22 Million Three Hundred Fifty Thousand Dollars (\$11,350,000) (the “Gross Settlement Amount”) is to
23 be paid by Defendant, as set forth in the Agreement. The Gross Settlement Amount will settle all issues
24 pending in the Action between the Parties and will be made in full and final settlement of the Released
25 Class Claims, Released FLSA Claims and Released PAGA Claims in exchange for the payments to
26 Class Members, FLSA Subclass Members and Aggrieved Employees; Class Counsel's attorneys' fees;

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

1 Class Counsel's litigation expenses and costs; the service award to the class representative; the LWDA
2 Payment; and settlement administration expenses. (Agreement at ¶ 1.24.) Decl. Nordrehaug at ¶3. The
3 following is a table of the key financial terms of the Settlement and the proposed deductions:

4 **\$11,350,000** (Gross Settlement Amount)

- 5 - \$80,000 (Class Representative Service Payments - not to exceed \$20,000 each)
- 6 - \$65,000 (Class Counsel's litigation costs - not to exceed amount)
- 7 - \$3,783,333.33 (attorneys' fees - not to exceed one-third of settlement)
- 8 - \$168,750 (LWDA PAGA Payment)
- 9 - \$220,000 (Administration Expenses Payment - not to exceed amount)

7 **\$7,032,916.67** (Net Settlement Amount to pay Individual Class Payments, Individual FLSA
8 Payments (\$200,000), and Individual PAGA Payments (\$56,250))

9 Based upon approximately 49,943 Class Members who collectively worked approximately 5,668,385
10 workweeks, the Gross Settlement Amount provides an average value of \$227 per Class Member and
11 \$2 per Workweek and after deductions the Net Settlement Amount provides an average recovery of
12 \$140.81 per Class Member and a recovery of \$1.24 per Workweek. Decl. Nordrehaug at ¶6.

13 On May 1, 2024, the Parties participated in an all-day mediation session presided over by David
14 Rotman, a respected and experienced mediator of wage and hour class actions. Following the
15 mediation, the Parties agreed on the basic terms of a settlement pursuant to a mediator's proposal which
16 was memorialized in the form of a Memorandum of Understanding. Decl. Nordrehaug at ¶5. The
17 Settlement is fair, reasonable and adequate, and should be preliminarily approved because there is a
18 substantial monetary payment, and there are significant litigation and class-certification risks.
19 Therefore, Plaintiffs respectfully request that this Court grant preliminary approval of the Agreement
20 and enter the proposed order submitted herewith.

21 **II. DESCRIPTION OF THE SETTLEMENT**

22 The Gross Settlement Amount is Eleven Million Three Hundred Fifty Thousand Dollars
23 (\$11,350,000). (Agreement at ¶ 1.24.) Under the Settlement, the Gross Settlement Amount consists
24 of the following elements: Individual Class Payments, Individual FLSA Payments, Individual PAGA
25 Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Litigation Expenses
26 Payment, Class Representative Service Payments, and the Administrator's Expenses Payment.
27 (Agreement at ¶ 1.24.) The Gross Settlement Amount does not include Defendant's share of payroll
28 taxes which Defendant will pay in addition to the Gross Settlement Amount. (Agreement at ¶ 1.24.)

1 The Gross Settlement Amount will be fully paid out, with no reversion to Defendant. (Agreement at
2 ¶ 3.1.) Decl. Nordrehaug at ¶15.

3 Defendant will pay to the Administrator the Gross Settlement Amount no later than 21 calendar
4 days after the Effective Date. (Agreement at ¶ 4.2.) The distribution of Individual Class Payments to
5 Participating Class Members along with the other Court-approved distributions shall be made by the
6 Administrator within 14 calendar days of the date Defendant fully funds the Gross Settlement Amount.
7 (Agreement at ¶ 4.3.) Decl. Nordrehaug at ¶16.

8 The “Net Settlement Amount” is the amount available to be paid to Participating Class
9 Members, Participating FLSA Subclass Members, and Aggrieved Employees as Individual Class
10 Payments, Individual FLSA Payments, and Individual PAGA Payments. The Net Settlement Amount
11 means the Gross Settlement Amount, less the following payments in the amounts approved by the
12 Court: the LWDA PAGA Payment, Class Representative Service Payments, Class Counsel Fees
13 Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment.
14 (Agreement at ¶ 1.31.) The Administrator will calculate the Individual Class Payment as follows: Each
15 Participating Class Member will be entitled to receive an amount, subject to any applicable employee
16 payroll taxes, equal to a proportionate share of the Net Settlement Amount, calculated by (i) the number
17 of the Participating Class Member's Workweeks during the Class Period, divided by (ii) the total
18 Workweeks of all Participating Class Members during the Class Period. (Agreement at ¶ 3.2.4.)
19 Workweeks will initially be based on Defendant’s records, however, Class Members will have the right
20 to challenge the number of workweeks. Decl. Nordrehaug at ¶17.

21 Class Members may choose to opt-out of the Settlement by following the directions in the Class
22 Notice. (Agreement at ¶ 7.5, Ex. A.) All Class Members who do not submit a “Request for Exclusion”
23 will be bound by the Settlement and will be entitled to receive a Settlement Award. (Agreement at ¶
24 7.5.3.) All Aggrieved Employees, including those who submit a Request for Exclusion, will still be paid
25 their Individual PAGA Payment and will remain subject to the release of the Released PAGA Claims
26 regardless of their Request for Exclusion from the Class. (Agreement at ¶ 7.5.4.) Finally, the Class
27 Notice advises the Class Members of their right to object to the Settlement. (Agreement at ¶ 7.7 and
28

1 Ex. A.) Decl. Nordrehaug at ¶18.

2 Participating Class Members must cash their Individual Class Payment check within 180 days
3 after it is mailed. (Agreement at ¶ 4.3.3.) Any settlement checks not cashed within 180 days will be
4 voided and any funds represented by such checks sent to the California Controller's Unclaimed Property
5 Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements
6 of C.C.P. § 384(b). (Agreement at ¶ 4.3.3.) Decl. Nordrehaug at ¶19.

7 Subject to Court approval, the Parties have agreed on ILYM Group, Inc. to administer the
8 settlement in this Action ("Administrator"). (Agreement at ¶ 1.2.) The Administrator will be paid for
9 settlement administration in an amount not to exceed \$220,000. (Agreement at ¶ 3.2.3.) ILYM
10 provided an estimate of \$195,500 for administration expenses. Decl. Nordrehaug at ¶20.

11 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
12 to exceed one-third of the Gross Settlement Amount, as the Class Counsel Fees Payment. (Agreement
13 at ¶ 3.2.2.) Class Counsel will also be allowed to apply separately for an award of Class Counsel
14 Litigation Expenses Payment in an amount not to exceed \$65,000. (Agreement at ¶ 3.2.2.) Subject to
15 Court approval, the Agreement provides for a payment of no more than \$20,000 each to Plaintiffs as
16 their Enhancement Awards. (Agreement at ¶ 3.2.1.) Decl. Nordrehaug at ¶21.

17 Subject to Court approval, the Parties have agreed to PAGA Penalties to be paid from the Gross
18 Settlement Amount for civil penalties under the California Private Attorneys General Act, Cal. Labor
19 Code Section 2698, *et seq.* ("PAGA") in the amount of \$225,000. (Agreement at ¶ 3.2.6.) Pursuant
20 to the express requirements of Labor Code § 2699(i), the PAGA Penalties shall be allocated as follows:
21 Seventy-five percent (75%) of this amount, or in other words \$168,750, will be paid out of the Gross
22 Settlement Amount to the LWDA of the State of California, and the remaining twenty-five percent
23 (25%), or in other words \$56,250, will be distributed to the Aggrieved Employees as their Individual
24 PAGA Payments. (Agreement at ¶ 3.2.6.) As set forth in the accompanying proof of service, the LWDA
25 has been served with this motion and the Agreement. Decl. Nordrehaug at ¶22.

26 **III. CASE BACKGROUND**

27 The description of the case and claims, along with the procedural history is set forth in the
28

1 Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and the
2 exchange of documents and information in connection with the Action over nearly two years which
3 permitted Class Counsel to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and 14.
4 The Parties participated in mediation on September 20, 2024 with David Rotman, which after arms'
5 length negotiations during the mediation, resulted in this Settlement. Decl. Nordrehaug, ¶12.

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

8 California "[p]ublic policy generally favors the compromise of complex class action litigation."
9 *Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 581 (2010) quoting *Cellphone Termination Fee*
10 *Cases*, 180 Cal.App.4th 1110, 1117-18 (2009). Class action settlements are approved where the
11 proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
12 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982), cert.
13 denied, 459 U.S. 1217 (1983)).

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

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

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

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

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

11 The approval of a proposed settlement of a class action suit is a matter within the broad
12 discretion of the trial court. *Wershba, supra*, 91 Cal.App.4th at 234-235; *Dunk*, 48 Cal.App.4th 1794.
13 In considering a potential settlement for preliminary approval purposes, the trial court does not have
14 to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute,
15 and need not engage in a trial on the merits. *Wershba, supra*, 91 Cal.App.4th at 239-40; *Dunk, supra*,
16 48 Cal.App. 4th at 1807. The Ninth Circuit explains, "the very essence of a settlement is compromise,
17 'a yielding of absolutes and an abandoning of highest hopes.'" *Officers for Justice*, 688 F.2d at 624.
18 Thus, when analyzing the settlement, the amount is "not to be judged against a hypothetical or
19 speculative measure of what might have been achieved by the negotiators." *Officers for Justice*, 688
20 F.2d at 625, 628.

21 With regard to class action settlements, the opinions of counsel should be given considerable
22 weight both because of counsel's familiarity with this litigation and previous experience with cases such
23 as these. *Officers for Justice*, 688 F.2d at 625. As a result, courts hold that the recommendation of
24 counsel is entitled to significant weight. *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D.
25 523, 528 (C.D. Cal. 2004).

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

27 A number of factors are to be considered in evaluating a settlement for purposes of preliminary
28

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

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

13 This settlement is the result of extensive and hard-fought litigation as well as negotiations before
14 an experienced and well-respected mediator. Defendant has expressly denied and continues to deny any
15 wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiffs and Class
16 Counsel have determined that it is desirable and beneficial to the Class to resolve the Released Class
17 Claims of the Class in accordance with this Settlement. The release applicable to the Class is
18 appropriately tethered to allegations in the Action. (Agreement at ¶ 5.2.)

19 Class Counsel are experienced and qualified to evaluate the class claims, the defenses asserted,
20 and the risks and benefits of trial and settlement, and Class Counsel are particularly experienced in wage
21 and hour employment class actions, as Class Counsel has previously litigated and certified similar
22 claims against other employers. Decl. Nordrehaug at ¶31; Declaration of James Hawkins at ¶¶ 16-19;
23 Declaration of Joshua Haffner at ¶¶ 4-7. The view of qualified and well-informed counsel that a class
24 action settlement is fair, adequate, and reasonable is entitled to significant weight. *See Kullar v. Foot*
25 *Locker*, 168 Cal. App. 4th 116, 133 (2008) (the trial court “undoubtedly should continue to place
26 reliance on the competence and integrity of counsel, the involvement of a qualified mediator, and the
27 paucity of objectors to the settlement.”); *Dunk*, 48 Cal. App. 4th at 1802.

28 The Parties attended an arms-length mediation session with David Rotman, a respected and

1 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
2 for the mediation, Defendant provided Class Counsel with payroll and employment data and other
3 information regarding the Class Members, various internal documents, and other compensation and
4 employment-related materials. Class Counsel analyzed the data with the assistance of damages expert
5 Berger Consulting and prepared and submitted a mediation brief to the mediator. The final settlement
6 terms were negotiated and set forth in the Agreement now presented for this Court's approval. Decl.
7 Nordrehaug at ¶ 5. Importantly, Plaintiffs and Class Counsel believe that this Settlement is fair,
8 reasonable and adequate.

9 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant is
10 Eleven Million Three Hundred Fifty Thousand Dollars (\$11,350,000). The Settlement is all-in with no
11 reversion to Defendant and no need to submit a claim form. Decl. Nordrehaug at ¶ 3.

12 Class Counsel has conducted an investigation into the facts of the class action. Both formal and
13 informal discovery was obtained, which included the production of thousands of pages of documents.
14 Class Counsel engaged in a thorough review and analysis of the relevant documents and data with the
15 assistance of an expert. Accordingly, the agreement to settle did not occur until Class Counsel
16 possessed sufficient information to make an informed judgment regarding the likelihood of success on
17 the merits and the results that could be obtained through further litigation. In addition, Class Counsel
18 previously negotiated settlements with other employers in actions involving nearly identical issues and
19 analogous defenses. Based on the foregoing data and their own independent investigation, evaluation
20 and experience, Class Counsel believes that the settlement with Defendant on the terms set forth in the
21 Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known
22 facts and circumstances, including the risk of significant delay, defenses asserted by Defendant, and
23 potential appellate issues. Decl. Nordrehaug at ¶ 14.

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

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

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

11 The proposed Settlement herein has no "obvious deficiencies" and is well within the range of
12 possible approval. All Class Members will receive an opportunity to participate in the Settlement and
13 receive payment according to the same formula. (Agreement at ¶ 3.2.4.) Based upon approximately
14 49,943 Class Members who collectively worked approximately 5,668,385 workweeks, the Gross
15 Settlement Amount provides an average value of \$227 per Class Member and \$2 per Workweek and
16 after deductions the Net Settlement Amount provides an average recovery of \$140.81 per Class Member
17 and a recovery of \$1.24 per Workweek. Decl. Nordrehaug, ¶6.

18 The calculations to compensate for the amount due to the Class Members at the time the
19 Settlement was negotiated were calculated by Plaintiffs’ expert, Berger Consulting, in advance of
20 mediation. Class Counsel analyzed the data for putative class members and determined the potential
21 maximum damages for the class claims. For the Class, the maximum value of the claim for unpaid
22 wages due to the alleged unpaid wages due to rounding was \$34,073,904, the maximum potential
23 damages for alleged meal period violations were estimated to be \$26,596,088 based upon a 37.9%
24 violation rate observed in the time records and after a reduction of 90% of the violations which were
25 subject to health care worker meal waivers under *Gerard v. Orange Coast Mem’l Med. Ctr.*, 6 Cal. 5th
26 443 (2018) and on-duty meal agreements, the maximum potential damages for alleged rest period
27 violations were estimated to be \$12,240,168 based upon an alleged violation rate of 1 uncompensated
28 rest violation every four months, the maximum potential damages for the alleged failure to reimburse

1 business expenses were calculated to be \$654,045 based upon a 10% violation rate for when phones /
2 ipads were not provided for work, and the alleged overtime and sick pay claims were of \$0 because
3 these claims were precluded by Cal. Labor Code §§ 514 and 245 and the existence of a collective
4 bargaining agreement. In total, the damages for the Class were calculated to have a maximum potential
5 total value of \$73,564,205. In addition, Plaintiffs calculated that the maximum value of the potential
6 waiting time penalties were between \$122,379,623 and \$149,698,514, depending on the predicate
7 violation, and the maximum value of the potential wage statement penalties were \$194,920,000.³
8 Defendant vigorously disputed Plaintiffs' calculations and exposure theories. Decl. Nordrehaug, ¶6.

9 Consequently, the Gross Settlement Amount of \$11,350,000 represents more than 15.4% of the
10 maximum value of the alleged damages at issue in this case at the time this Settlement was negotiated.⁴
11 Importantly, the recent decision that good faith belief of compliance by the employer in *Naranjo v.*
12 *Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065 (2024), could completely negate the claims for
13 waiting time and wage statement penalties, even if wages were owed to the Class. The above maximum
14 calculations should then be adjusted in consideration for both the risk of class certification and the risk
15 of establishing class-wide liability on all claims. Given the amount of the settlement as compared to
16 the potential value of claims in this case and the defenses asserted by Defendant, this settlement is fair
17 and reasonable.⁵ Clearly, the goal of this litigation has been met. Decl. Nordrehaug, ¶6.

18
19 ³ While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
20 226, at mediation Plaintiffs recognized that these claims were subject to additional, separate defenses
21 asserted by Defendant, including but not limited to, a good-faith dispute defense as to whether any
22 premium wages for meal or rest periods or other wages were owed given Defendant's position that
23 Plaintiffs and Class Members were properly compensated. See *Nordstrom Commission Cases*, 186 Cal.
24 App. 4th 576, 584 (2010) ("There is no willful failure to pay wages if the employer and employee have
25 a good faith dispute as to whether and when the wages were due.").

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

29 ⁵ See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a
30 settlement where the settlement amount constituted approximately 25% of the estimated overtime
31 damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12
32 (N.D. Cal. 2015) (granting final approval where "the proposed Total Settlement Amount represents
33 approximately 10% of what class might have been awarded had they succeeded at trial."); *Dunleavy v.*

1 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
2 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Defendant asserted a number of defenses which
3 presented serious threats to the claims of the Plaintiffs and the other Class Members. Defendant
4 maintains that its practices complied with all applicable wage and hour laws. Defendant maintains that
5 all Class Members' work time was properly recorded and compensated and that there was no
6 miscalculation of the regular rate. Defendant contends that its meal and rest period policies and
7 practices provide Class Members with meal and rest periods and that the payment of significant meal
8 premiums is evidence of Defendant's legally compliant practices. As to expense reimbursement,
9 Defendant maintains that it did not fail to provide reimbursement for necessary business expenses
10 because, among other things, employees are not required to use their personal cell phones to perform
11 their work. Defendant could argue that the decisions in *Brinker v. Superior Court*, 53 Cal. 4th 1004
12 (2012), *Lockheed Martin Corp. v. Superior Ct.*, 29 Cal. 4th 1096, 1108 (2003), and *Salazar v. See's*
13 *Candy Shops Inc.*, 64 Cal.App.5th 85 (2021), weakened Plaintiffs' claims in terms of liability and value,
14 and preclude claims from proceeding on a class or representative basis. Defendant also maintains that
15 a good faith dispute and absence of willfulness would negate the claims for waiting time penalties and
16 failure to provide accurate itemized wage statements. See e.g. *Naranjo v. Spectrum Sec. Servs.*, 15 Cal.
17 5th 1056, 1065 (May 6, 2024) ("if an employer reasonably and in good faith believed it was providing
18 a complete and accurate wage statement in compliance with the requirements of section 226, then it has
19 not knowingly and intentionally failed to comply with the wage statement law.") If successful,
20 Defendant's defenses could eliminate or substantially reduce any recovery to the Class. While Plaintiffs
21 believe that these defenses could be overcome, Defendant maintains these defenses have merit and
22 therefore present a serious risk to recovery by the Class. Decl. Nordrehaug, ¶ 24.

23 There was also a significant risk that, if the Action was not settled, Plaintiffs would be unable
24

25 *Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000) (affirming approval of
26 a class settlement which represented "roughly one-sixth of the potential recovery".) See also *Viceral v.*
27 *Mistras Grp., Inc.*, 2016 WL 5907869 (N.D. Cal. 2016) (approving wage and hour class action
28 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 to obtain class certification and thereby not recover on behalf of any employees other than themselves.
2 Defendant argued that the individual experience of each putative class member varied with respect to
3 the claims, which would preclude the claims from proceeding on a class basis. For instance, Plaintiffs'
4 meal and rest period claims would require individualized inquiries into whether each employee took
5 a compliant meal or rest period on a given shift and, if not, why. Plaintiffs are aware of other cases
6 where class certification of similar claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43 Cal. App.
7 5th 885 (2019) (denying certification of rest break claims). Finally, even if class certification was
8 successful, as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National*
9 *Association*, 59 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class-wide recovery
10 even where a class has been certified. While other cases have approved class certification of wage and
11 hour claims, class certification in this Action would have been hotly disputed and was by no means a
12 foregone conclusion. Decl. Nordrehaug, ¶ 25.

13 After arm's length negotiations between experienced and informed counsel, the Parties
14 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of
15 \$11,350,000. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

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

22 2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
23 (9th Cir. 2000)).

24 **3. The Settlement Does Not Improperly Grant Preferential Treatment To** 25 **Class Representatives or Segments Of The Class**

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

1 Plaintiffs will apply to the Court for Class Representative Service Payments in consideration
2 for their service and for the risks undertaken on behalf of the Class. (Agreement at ¶ 3.2.1.) Plaintiffs
3 performed their duties admirably by working with Class Counsel over the course of litigation. The
4 Declarations of the Plaintiffs are submitted herewith in support. Decl. Nordrehaug at ¶27. At this stage,
5 the requested service awards are well within the accepted range of awards for purposes of preliminary
6 approval. *See e.g. Louie v. Kaiser Foundation Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D. Cal. Oct.
7 06, 2008) (awarding \$25,000 service award to each of six plaintiffs in overtime class action); *Glass v.*
8 *UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D. Cal. 2007) (awarding \$25,000 service award in
9 overtime class action and a pool of \$100,000 in enhancements); *Andrews v. Plains All Am. Pipeline*
10 *L.P.*, 2022 U.S. Dist. LEXIS 172183, at *11 (C.D. Cal. 2022) (finding that the requested service awards
11 of \$15,000 each are appropriate); *Reynolds v. Direct Flow Med., Inc.*, 2019 U.S. Dist. LEXIS 149865,
12 at *19 (N.D. Cal. 2019) (granting request for \$12,500 service award); *Mathein v. Pier 1 Imps. (U.S.)*,
13 *Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500 where average class member
14 payment was \$351); As explained in *Glass*, service awards are routinely awarded to class
15 representatives to compensate the employees for the time and effort expended on the case, for the risk
16 of litigation, for the fear of suing an employer and retaliation there from, and to serve as an incentive
17 to vindicate the statutory rights of all employees. 2007 WL 221862 at *16-17.

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

20 The stage of the proceedings at which this Settlement was reached also militates in favor of
21 preliminary approval and ultimately, final approval of the Settlement. Class Counsel has conducted a
22 thorough investigation into the facts of the class action. Class Counsel began investigating the Class
23 Members' claims before the Action was filed, and during the course of litigation, Class Counsel
24 engaged in both formal and informal discovery to obtain necessary information. Class Counsel
25 conducted a review and analysis of the relevant documents and data. Class Counsel was also
26 experienced with the claims at issue here, as Class Counsel previously litigated and settled similar
27 claims in other actions. Accordingly, the agreement to settle did not occur until Class Counsel
28 possessed sufficient information to make an informed judgment regarding the likelihood of success on

1 the merits and the results that could be obtained through further litigation. Decl. Nordrehaug at ¶28.

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

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

10 Plaintiffs contend that the proposed settlement meets all of the requirements for class
11 certification under California Code of Civil Procedure § 382 as demonstrated below, and therefore, the
12 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 non-exempt persons who were employed by Defendant in the State of California at
15 any time during the Class Period (January 1, 2021 through December 31, 2024).

16 (Agreement at ¶ 1.5.)

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

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

21 Code of Civil Procedure Section 382 authorizes class actions “when the question is one
22 of a common or general interest, of many persons, or when the parties are numerous, and
23 it is impracticable to bring them all before the court....” The party seeking certification
24 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.

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

26 While Defendant reserves all rights to dispute that the Plaintiffs can satisfy these requirements,
27 the Parties agree that Defendant will not dispute that these requirements may be satisfied in this case
28

1 for purposes of settlement only and therefore, the proposed Class should be certified for purposes of
2 settlement only. (Agreement at ¶ 11.1.)

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

4 Plaintiffs bring this action on behalf of a Class of non-exempt employees of Defendant during
5 the Class Period. Plaintiffs assert that all of these individuals are ascertainable because the class
6 members can readily be determined through examination of Defendant's files. Given that the Class
7 consists of approximately 49,943 individuals, Plaintiffs maintain that numerosity is clearly satisfied.
8 *See Bowles v. Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous);
9 *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity
10 requirement.) Here, Plaintiffs assert that the 49,943 current and former employees that comprise the
11 Class can be identified based on Defendant's records and are sufficiently numerous for class
12 certification. Decl. Nordrehaug at ¶30.

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

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

19 Commonality exists if there is a predominant common legal question regarding how an
20 employer's policies impact its employees. *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524,
21 1536 (2008) ("[T]he common legal question remains the overall impact of Diva's policies on its
22 drivers.") Whether the plaintiff is likely to prevail on their theory of recovery is irrelevant at the
23 certification stage since the question is "essentially a procedural one that does not ask whether an action
24 is legally or factually meritorious." *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2003).

25 Here, Plaintiffs contend that common questions of law and fact are present, specifically the
26 common questions of whether Defendant's employment practices were lawful, whether Defendant
27 failed to provide meal and rest periods to Class Members, whether Class members were lawfully
28

1 compensated for all hours worked, whether Defendant correctly calculated the regular rate, whether
2 Defendant failed to provide required expense reimbursement, and whether Class Members are entitled
3 to damages and penalties as a result of these practices. Plaintiffs contend that certification of this Class
4 is appropriate because Defendant allegedly engaged in uniform practices with respect to the Class
5 Members. As a result, these common questions of liability could be answered on a class wide basis.
6 Decl. Nordrehaug, ¶30. Defendant disputes that common questions predominate but will not oppose
7 such a finding for purposes of this Settlement only.

8 **D. The Claims of the Plaintiffs Are Typical of the Class Claims**

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

15 In this Action, Plaintiffs contend that the typicality requirement is fully satisfied. Plaintiffs, like
16 every other member of the Class, were employed by Defendant as non-exempt employees, and, like
17 every other member of the Class, were subject to the same employment practices. Plaintiffs, like every
18 other member of the Class, also claim owed compensation as a result of the Defendant’s alleged
19 uniform company policies and practices. Thus, the alleged claims of Plaintiffs and the members of the
20 Class arise from the same course of conduct by Defendant, involve the same issues, and are based on
21 the same legal theories. Decl. Nordrehaug at ¶30. For purposes of settlement, Plaintiffs assert that the
22 typicality requirement is met as to the common issues presented in this case. Defendant does not
23 oppose a finding of typicality for purposes of this Settlement only.

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

25 Plaintiffs contend that the Class Members are adequately represented here because Plaintiffs and
26 representing counsel (a) do not have any conflicts of interest with other class members, and (b) will
27 prosecute the case vigorously on behalf of the class. *Hanlon*, 150 F.3d at 1020. This requirement is
28

1 met here. First, Plaintiffs are well aware of their duties as the representatives of the Class and have
2 actively participated in the prosecution of this case to date. Plaintiffs effectively communicated with
3 Class Counsel, provided documents and information to Class Counsel, and participated in the
4 investigation and resolution of the Action. The personal involvement of the Plaintiffs was essential to
5 the prosecution of the Action and the monetary settlement reached. Second, Plaintiffs retained
6 competent counsel who are experienced in employment class actions and who have no conflicts. Decl.
7 Nordrehaug at ¶ 31; Declaration of James Hawkins at ¶ 19; Declaration of Joshua Haffner at ¶¶ 4-7.
8 Third, there is no antagonism between the interests of the Plaintiffs and those of the Class. Both the
9 Plaintiffs and the Class Members seek monetary relief under the same set of facts and legal theories.
10 Under such circumstances, there can be no conflicts of interest, and adequacy of representation is
11 satisfied. *Reaves v. Ketoro, Inc.*, 2020 U.S. Dist. Lexis 167926, *23 (C.D. Cal. 2020). Defendant
12 disputes that the adequacy requirement is satisfied but will not oppose such a finding for purposes of
13 this Settlement only.

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

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

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

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

27 Here, Plaintiffs contend that a class action is the superior mechanism for resolution of the claims
28 as pled by the Plaintiffs. While Defendant disputes that class treatment is superior, Defendant does not
dispute a finding of superiority in this action for purposes of this Settlement only.

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

2 The Court has broad discretion in approving a practical notice program. The Parties have agreed
3 upon procedures by which the Class Members will be provided with written notice of the Settlement
4 similar to that approved and utilized in hundreds of class action settlements. In accordance with the
5 Agreement, Defendant will provide to the Administrator a confidential electronic spreadsheet
6 containing the Class Data. (Agreement at ¶ 4.1.) Within 21 days of receipt of the Class Data, the
7 Administrator will mail the Class Notice to all Class Members via first-class U.S. Mail using the most
8 current mailing address information available. (Agreement at ¶ 7.4.2.)

9 The Class Notice, drafted jointly and agreed upon by the Parties through their respective counsel
10 and to be approved by the Court, includes all relevant information. (*See Exhibit A* to the Agreement.)
11 The Class Notice will include, among other information: (i) information regarding the Action; (ii) the
12 impact on the rights of the Class Members if they do not opt out, including a description of the
13 applicable release; (iii) information to the Class Members regarding how to opt out and how to object
14 to the Settlement; (iv) the estimated Individual Class Payment, Individual FLSA Payment and
15 Individual PAGA Payment for each of the Class Members; (iii) the amount of attorneys' fees and
16 expenses to be sought; (v) the amount of the Plaintiffs' service award request; and (vi) the anticipated
17 expenses of the Administrator. Decl. Nordrehaug at ¶32.

18 The Class Notice will state that the Class Members shall have sixty (60) days from the date that
19 the Class Notice is mailed to them (the "Response Deadline") to request exclusion (opt-out) or to
20 submit a written objection. (Agreement at ¶ 1.47.) Class Members shall be given the opportunity to
21 object to the Settlement and/or requests for attorneys' fees and expenses and to appear at the Final
22 Approval Hearing. (Agreement at ¶ 7.7.) Class Members who do not submit a timely and proper
23 request to opt-out will automatically receive a payment of their Individual Class Payment. This notice
24 program was designed to meaningfully reach the Class Members and it advises them of all pertinent
25 information concerning the Settlement. Decl. Nordrehaug at ¶32. The mailing and distribution of the
26 Class Notice satisfies the requirements of due process and is the best notice practicable under the
27 circumstances and complies with Rules of Court 3.766 and 3.769(f).
28

1 **VII. CONCLUSION**

2 Plaintiffs respectfully request that the Court preliminarily approve the proposed settlement and
3 sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the final
4 approval hearing for the proposed date of September 5, 2025.

5 Dated: March 24, 2025

**BLUMENTHAL NORDREHAUG BHOWMIK
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By: /s/ Kyle Nordrehaug

Kyle R. Nordrehaug, Esq.

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