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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF VENTURA

PAOLA URIBE, individually, MARIA
SOTO, individually, and on behalf of others
similarly situated,
Plaintiffs,

vs.

MONROE OPERATIONS, LLC, (dba
Newport Healthcare, Newport Academy,
Newport Institute, and Center for Families)),
and DOES ONE through TWENTY
inclusive,
Defendants.

CASE NO.: **56-2021-00561341-CU-OE-VTA**

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

Hearing Date: May 31, 2024
Hearing Time: 8:30 a.m.

Judge: Hon. Mark S. Borrell
Dept.: 40

Action Filed: March 18, 2021
Trial Date: Not set

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	DESCRIPTION OF THE SETTLEMENT.....	2
III.	CASE BACKGROUND.....	3
IV.	THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO GRANT PRELIMINARY APPROVAL	3
A.	The Role Of The Court In Preliminary Approval Of A Class Action Settlement	4
B.	Factors To Be Considered In Granting Preliminarily Approval.....	5
1.	The Settlement is the Product of Serious, Informed and Arm's Length Negotiations by Experienced Counsel.....	5
2.	The Settlement Has No "Obvious Deficiencies" and Falls Within the Range for Approval.....	7
3.	The Settlement Does Not Improperly Grant Preferential Treatment To Class Representatives or Segments Of The Class	10
4.	The Stage Of The Proceedings Are Sufficiently Advanced To Permit Preliminary Approval Of The Settlement	11
V.	THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES	11
A.	California Code of Civil Procedure § 382	11
B.	The Proposed Class Is Ascertainable and Numerous	12
C.	Common Issues of Law and Fact Predominate.....	12
D.	The Claims of the Plaintiffs Are Typical of the Class Claims	13
E.	The Class Representation Fairly and Adequately Protected the Class	14
F.	The Superiority Requirement Is Met.....	14
VI.	THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE	15
VII.	CONCLUSION.....	15

TABLE OF AUTHORITIES

<u>Cases:</u>	<u>Page:</u>
<i>Andrews v. Plains All Am. Pipeline L.P.</i> , 2022 U.S. Dist. LEXIS 172183 (C.D. Cal. 2022)	10
<i>Brinker v. Superior Court</i> , 53 Cal. 4th 1004 (2012)	9
<i>Bowles v. Superior Court</i> , 44 Cal.2d 574 (1955)	12
<i>Cellphone Termination Fee Cases</i> , 180 Cal.App.4th 1110 (2009)	3
<i>Cho v. Seagate Tech. Holdings, Inc.</i> , 177 Cal. App. 4th 734 (2009)	4
<i>Dunk v. Ford Motor Co.</i> , 48 Cal.App.4th 1794 (1996)	3, 4, 6
<i>Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)</i> , 213 F.3d 454 (9 th Cir. 2000)	9
<i>Duran v. U.S. Bank National Assn.</i> , 59 Cal. 4th 1 (2014)	9
<i>Frazier v. City of Richmond</i> , 184 Cal.App.3d 1491 (1986)	4
<i>Gautreaux v. Pierce</i> , 690 F.2d 616 (7 th Cir. 1982)	4
<i>Ghazaryan v. Diva Limousine, Ltd.</i> , 169 Cal. App. 4th 1524 (2008)	2
<i>Glass v. UBS Fin. Servs.</i> , 2007 U.S. Dist. LEXIS 8476 (N.D.Cal. 2007)	8, 9, 10
<i>Green v. Obledo</i> , 29 Cal.3d 126 (1981)	4
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9 th Cir. 1998)	8, 13, 14
<i>In re Tableware Antitrust Litig.</i> , 484 F.Supp. 2d 1078 (N.D. Cal. 2007)	5
<i>In re Wash. Public Power Supply System Sec. Litig.</i> , 720 F. Supp. 1379 (D. Ariz. 1989)	6
<i>Kullar v. Foot Locker</i> , 168 Cal. App. 4th 116 (2008)	5, 6
<i>Linder v. Thrifty Oil Co.</i> , 23 Cal. 4th 429 (2003)	13

1	<i>Louie v. Kaiser Foundation Health Plan, Inc.,</i>	
2	2008 WL 4473183 (S.D.Cal. 2008)	10
3	<i>Ma v. Covidien Holding, Inc.,</i>	
4	2014 WL 2472316, (C.D. Cal. 2014)	8
5	<i>Mathein v. Pier 1 Imps. (U.S.), Inc.,</i>	
6	2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018)	10
7	<i>Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.,</i>	
8	221 F.R.D. 523 (C.D. Cal. 2004)	5
9	<i>Nordstrom Comm'n Cases,</i>	
10	186 Cal. App. 4th 576 (2010)	3, 8
11	<i>Officers for Justice v. Civil Service Com'n, etc.,</i>	
12	688 F.2d. 615 (9th Cir. 1982)	3, 4, 5
13	<i>Reynolds v. Direct Flow Med., Inc.,</i>	
14	2019 U.S. Dist. LEXIS 149865 (N.D. Cal. 2019)	10
15	<i>Rose v. City of Hayward,</i>	
16	126 Cal.App.3d 926 (1981)	12
17	<i>Sav-On Drug Stores, Inc. v. Superior Court,</i>	
18	34 Cal. 4th 319 (2004)	12, 15
19	<i>Sayaman v. Baxter Healthcare Corp.,</i>	
20	2010 U.S. Dist. LEXIS 151997 (C.D. Cal. 2010)	4
21	<i>Stovall-Gusman v. W.W. Granger, Inc.,</i>	
22	2015 U.S. Dist. LEXIS 78671 (N.D. Cal. 2015)	8
23	<i>Tate v. Weyerhaeuser Co.,</i>	
24	723 F.2d 598 (8th Cir. 1983)	13
25	<i>Valentino v. Carter-Wallace, Inc.,</i>	
26	97 F.3d 1227 (9th Cir. 1996)	14
27	<i>Vasquez v. Superior Court,</i>	
28	4 Cal.3d 800 (1971)	4
29	<i>Viceral v. Mistras Grp., Inc.,</i>	
30	2016 WL 5907869 (N.D. Cal. Oct. 11, 2016)	8
31	<i>Wershba v. Apple Computer, Inc.,</i>	
32	91 Cal.App.4th 224 (2001)	4
33	<u>Statutes, Rules and Regulations:</u>	
34	California Code of Civil Procedure §382	11, 12
35	California Labor Code §203	7
36	California Labor Code §226	7

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California Rules of Court, rule 3.766 15

California Rules of Court, rule 3.769 4, 15

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1 **I. INTRODUCTION**

2 Plaintiffs Paola Uribe and Maria Soto (“Plaintiffs”) respectfully submit this memorandum in
3 support of the unopposed motion for preliminary approval of the proposed class action settlement with
4 Defendant Monroe Operations, LLC (“Defendant”), and seek entry of an order: (1) preliminarily
5 approving the proposed settlement of this class action with Defendant; (2) for settlement purposes only,
6 conditionally certifying the Class, which is comprised of “all individuals who were employed by
7 Defendant in California and classified as a non-exempt employee at any time during the Class Period”,
8 which is July 7, 2018 through January 7, 2024; (3) provisionally appointing Plaintiffs as the
9 representatives of the Class; (4) provisionally appointing Norman B. Blumenthal, Kyle R. Nordrehaug,
10 and Aparajit Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP, Daniel F. Gaines and Alex
11 P. Katofsky of Gaines & Gaines, APLC, and Stan S. Mallison of Mallison & Martinez as Class
12 Counsel; (5) approving the form and method for providing class-wide notice; (6) directing that notice
13 of the proposed settlement be given to the class; (7) appointing Apex Class Action LLC as
14 Administrator, and (8) scheduling a final approval hearing date, proposed for October 1, 2024 to
15 consider Plaintiffs’ motion for final approval of the settlement and for approval of attorneys’ fees and
16 expenses. Plaintiffs and Defendant (collectively the “Parties”) have reached a full and final settlement
17 of the above-captioned action, which is set forth in the Class Action and PAGA Settlement Agreement
18 (“Agreement”) filed concurrently with the Court.¹ A copy of the fully executed Agreement is attached
19 as Exhibit #1 to the Declaration of Kyle Nordrehaug (“Decl. Nordrehaug”), served and filed herewith.
20 The form of the Agreement is based upon the Los Angeles County Superior Court model form for a
21 class and PAGA settlement.

22 As consideration for this Settlement, the non-reversionary Gross Settlement Amount of Two
23 Million One Hundred Ninety-Five Thousand Dollars (\$2,195,000) (the “Gross Settlement Amount”)
24 is to be paid by Defendant, as set forth in the Agreement. The Gross Settlement Amount will settle all
25 issues pending in the Action between the Parties and will be made in full and final settlement of the
26 Released Class Claims in exchange for the payments to Participating Class Members from the Net
27 Settlement Amount, and includes (a) the costs of administration of the settlement, (b) all attorneys' fees
28

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

1 and costs, (c) Class Representative Service Payments, and (d) the PAGA Penalties payment allocated
2 75% to the LWDA and 25% to the Aggrieved Employees. (Agreement at ¶ 1.22.) Decl. Nordrehaug
3 at ¶3. The following is a table of the key Settlement terms and the proposed deductions:

4 **\$2,195,000** (Gross Settlement Amount)

- 5 - \$75,000 (Plaintiffs' proposed service awards not to exceed \$15,000 each)
- 6 - \$50,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- 7 - \$731,666 (Class Counsel Fees Payment - not to exceed 1/3 of settlement)
- 8 - \$316,780.40 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
- 9 - \$20,000 (Administration Expenses Payment - not to exceed amount)

10 **\$1,001,553.60** (Net Settlement Amount)

11 Based upon 353 Class Members who worked an estimated 26,374 work weeks (Agreement at ¶ 4.1),
12 the Gross Settlement Amount provides an average value of \$6,218 per Class Member and \$83 per
13 workweek and after deductions the Net Settlement Amount provides an average recovery of \$2,837.26
14 per Class Member and a recovery of \$37.97 per workweek. Decl. Nordrehaug at ¶6.

15 On August 1, 2023, the Parties participated in an all-day mediation session presided over
16 Brandon McKelvey, a respected jurist and experienced mediator of wage and hour class actions.
17 Following the mediation, the Parties agreed on the basic terms of a settlement pursuant to a mediator's
18 proposal which was memorialized in the form of a Memorandum of Understanding. Decl. Nordrehaug
19 at ¶5. The Settlement is fair, reasonable and adequate, and should be preliminarily approved because
20 there is a substantial monetary payment, and there are significant litigation and class-certification risks.
21 Therefore, Plaintiffs respectfully request that this Court grant preliminary approval of the Agreement
22 and enter the proposed order submitted herewith.

23 **II. DESCRIPTION OF THE SETTLEMENT**

24 The Gross Settlement Amount is Two Million One Hundred Ninety-Five Thousand Dollars
25 (\$2,195,000). (Agreement at ¶ 1.22.) Under the Settlement, the Gross Settlement Amount consists of
26 the following elements: (1) payment of the Individual Class Payments to the Participating Class
27 Members; (2) Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (3)
28 Administration Expenses Payment; (4) the Class Representative Service Payments to the Plaintiffs; and
the PAGA Penalties payment. (Agreement at ¶ 1.22.) The Gross Settlement Amount does not
include Defendant's share of payroll taxes. (Agreement at ¶ 3.1.) The Gross Settlement Amount shall
be all-in with no reversion to Defendant. (Agreement at ¶ 3.1.) Decl. Nordrehaug at ¶15.

The Agreement contains appropriate terms which have been previously approved by this Court

1 and Courts throughout California. (See Agreement at ¶¶ 1.28, 3.2, 4.3, 5.1.) The proposed Class Notice
2 also provides the required protections for the Class to opt out, object or dispute their weeks worked.
3 (See Agreement at ¶¶ 8.5, 8.6, 8.7, and Exhibit A.) The additional details of the Settlement are
4 addressed in the Decl. Nordrehaug at ¶¶ 16-22. As set forth in the accompanying proof of service, the
5 LWDA has been served with this motion and the Agreement.

6 **III. CASE BACKGROUND**

7 The description of the case and claims, along with the procedural history is set forth in the
8 Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and the
9 exchange of documents and information in connection with the Action for more than two years which
10 permitted Class Counsel to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10, 14.
11 The Parties participated in mediation on August 1, 2023 with Brandon McKelvey, which after arms'
12 length negotiations during and after the mediation, resulted in this Settlement. Decl. Nordrehaug, ¶12.

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

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

20 Preliminary approval is the first of three steps that comprise the approval procedure for
21 settlements of class actions. The second step is the dissemination of notice of the settlement to all class
22 members. The third step is a final settlement approval hearing, at which evidence and argument
23 concerning the fairness, adequacy, and reasonableness of the settlement may be presented, and class
24 members may be heard regarding the settlement. See *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
25 1801 (1996); *Manual for Complex Litigation, Second* §30.44 (1993); Cal. Rules of Court, rule 3.769.

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

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

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

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

23 With regard to class action settlements, the opinions of counsel should be given considerable
24 weight both because of counsel’s familiarity with this litigation and previous experience with cases such
25 as these. *Officers for Justice*, 688 F.2d at 625. As a result, courts hold that the recommendation of

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

counsel is entitled to significant weight. *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004).

B. Factors To Be Considered In Granting Preliminary Approval

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

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

This settlement is the result of extensive and hard-fought litigation as well as negotiations before an experienced and well-respected mediator. Defendant has expressly denied and continues to deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiffs and Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released Class Claims of the Class in accordance with this Settlement. The release applicable to the Class is appropriately tethered to allegations in the Action. (Agreement at ¶¶ 1.39 and 6.2.)

Class Counsel are experienced and qualified to evaluate the class claims, the defenses asserted, and the risks and benefits of trial and settlement, and Class Counsel are particularly experienced in wage and hour employment class actions, as Class Counsel has previously litigated and certified similar claims against other employers. Decl. Nordrehaug at ¶31; Declaration of Stan Mallinson at ¶¶ 4-11; Declaration of Daniel Gaines at ¶¶ 2-5. The view of qualified and well-informed counsel that a class action settlement is fair, adequate, and reasonable is entitled to significant weight. *See Kullar v. Foot Locker*, 168 Cal. App. 4th 116, 133 (2008) (the trial court "undoubtedly should continue to place

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

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

12 Class Counsel has conducted a thorough investigation into the facts of the class action as
13 detailed in the Decl. Nordrehaug. Based on the Class data and their own independent investigation,
14 evaluation and experience, Class Counsel believes that the settlement with Defendant on the terms set
15 forth in the Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light
16 of all known facts and circumstances, including the risk of significant delay, defenses asserted by
17 Defendant, and potential appellate issues. Decl. Nordrehaug at ¶ 14. Plaintiffs and Class Counsel
18 recognize the risks, expense and length of continuing to litigate and trying this Action against Defendant
19 and then litigating possible appeals which could take several years. Plaintiffs and Class Counsel have
20 determined that the Settlement set forth in the Agreement is in the best interest of the Class Members.
21 Decl. Nordrehaug, ¶ 23.

22 Here, there can be no dispute that the litigation has been hard-fought with aggressive and
23 capable advocacy on both sides. The Parties were represented by experienced and capable counsel who
24 zealously advocated their positions. Accordingly, "[t]here is likewise every reason to conclude that
25 settlement negotiations were vigorously conducted at arms' length and without any suggestion of undue
26 influence." *In re Wash. Public Power Supply Sec. Litig.*, 720 F. Supp. 1379, 1392 (D. Ariz 1989).

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

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

1 possible approval. All Class Members will receive an opportunity to participate in the Settlement and
2 receive payment according to the same formula. (Agreement at ¶ 3.2(e).) Based upon 353 Class
3 Members who worked an estimated 26,374 work weeks (Agreement at ¶ 4.1), the Gross Settlement
4 Amount provides an average value of \$6,218 per Class Member and \$83 per workweek and after
5 deductions the Net Settlement Amount provides an average recovery of \$2,837.26 per Class Member
6 and a recovery of \$37.97 per workweek. Decl. Nordrehaug, ¶6.

7 The calculations to compensate for the amount due for the Class at the time of the mediation
8 were calculated by Berger Consulting, Plaintiffs' damage expert. As to the Class whose claims are at
9 issue in this Action, Plaintiffs used the expert to analyze the data and determine the potential unpaid
10 wages for the employees. The maximum potential damages were calculated to be \$10,847 for alleged
11 unpaid overtime premium wages, \$918,840 for the alleged unpaid wages for off-the-clock work due to
12 at 1 hour per week, \$42,567 for the alleged unpaid wages due to miscalculation of the regular rate when
13 paying wages, \$36,383 for the alleged underpayment of meal period premiums and sick pay, \$1,269,229
14 for alleged meal period damages based upon a 53% potential violation rate for shifts worked and after
15 accounting for the meal premiums (\$715,725) actually paid by Defendant, \$1,539,064 for alleged rest
16 period damages based upon the same 53% potential violation rate for shifts worked, \$104,785 for
17 alleged unreimbursed business expenses at \$5 per month for personal cell phone usage. As a result, the
18 total damage valuation was calculated that Defendant was subject to a maximum damage claim in the
19 amount of \$3,921,715. As to potential penalties, Plaintiffs calculated that potential waiting time
20 penalties were a maximum of between \$1,009,192 and \$1,488,418, and potential maximum wage
21 statement penalties were \$1,073,188.³ Defendant vigorously disputed Plaintiffs' calculations and
22 exposure theories. Decl. Nordrehaug, ¶6.

23 Consequently, the Gross Settlement Amount of \$2,195,000 represents more than 48% of the
24

25
26 ³ While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
27 226, at mediation Plaintiffs recognized that these claims were subject to additional, separate defenses
28 asserted by Defendant, including, a good faith dispute defense as to whether any premium wages for
meal or rest periods or other wages were owed given Defendant's position that Plaintiffs and 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.").

1 maximum value of the alleged damages at issue in this case at the time this Settlement was negotiated.⁴
2 The above maximum calculations should then be adjusted in consideration for both the risk of class
3 certification and the risk of establishing class-wide liability on all claims. Given the amount of the
4 settlement as compared to the potential value of claims in this case and the defenses asserted by
5 Defendant, this settlement is fair and reasonable.⁵ Clearly, the goal of this litigation has been met.
6 Decl. Nordrehaug, ¶6.

7 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
8 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
9 Defendant present serious threats to the claims of the Plaintiffs and the other Class Members.
10 Defendant asserted that Defendant's practices complied with all applicable Labor laws. Defendant
11 argued that Class Members were paid for all time worked and that all work time was properly recorded.
12 Defendant maintained there was no miscalculation of the regular rate when paying wages to the
13 Plaintiffs and the Class. Defendant contends that its meal and rest period policies fully complied with
14 California law and Defendant did not fail to provide the opportunity for legally required meal and rest
15 breaks. Defendant could argue that its payment of significant meal period premiums is evidence of its
16 lawful practices. Defendant contend that there was no failure to pay for business expenses and any cell
17 phone usage was merely convenient and voluntary such that reimbursement was not legally required.
18 Finally, Defendant could argue that the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal.
19 4th 1004 (2012), weakened Plaintiffs' claims, on liability, value, and class certifiability as to the meal
20 and rest period claims. Defendant also argues that based on its facially lawful practices, Defendant
21

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

25 ⁵ See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a
26 settlement where the settlement amount constituted approximately 25% of the estimated overtime
27 damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12
28 (N.D. Cal. 2015) (granting final approval where "the proposed Total Settlement Amount represents
approximately 10% of what class might have been awarded had they succeeded at trial."); *Viceral v.*
Mistras Grp., Inc., 2016 WL 5907869 (N.D. Cal. 2016) (approving wage and hour class action
settlement amounting to 8.1% of full value); *Ma v. Covidien Holding, Inc.*, 2014 WL 2472316, (C.D.
Cal. 2014) (approving wage and hour class action settlement worth "somewhere between 9% and 18%"
of maximum valuation).

1 acted in good faith and without willfulness, which if accepted would negate the claims for waiting time
2 penalties and/or inaccurate wage statements. If successful, Defendant's defenses could eliminate or
3 substantially reduce any recovery to the Class. While Plaintiffs believe that these defenses could be
4 overcome, Defendant maintains these defenses have merit and therefore present a serious risk to
5 recovery by the Class. Decl. Nordrehaug, ¶ 24.

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

15 After arm's length negotiations between experienced and informed counsel, the Parties
16 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of
17 \$2,195,000. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

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

24 2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
25 (9th Cir. 2000)).

26 **3. The Settlement Does Not Improperly Grant Preferential Treatment To** 27 **Class Representatives or Segments Of The Class**

28 The relief provided in the Settlement will benefit all members of the Class. The Settlement does
not grant preferential treatment to Plaintiffs or segments of the Class in any way. Payments to the Class
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 weeks worked 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(a).) Plaintiffs
3 performed their duties admirably by working with Class Counsel over the course of litigation. The
4 Declaration of the Plaintiffs are submitted herewith in support. Decl. Nordrehaug at ¶27. At this stage,
5 the requested service award is within the accepted range of awards for purposes of preliminary approval.
6 See e.g. *Andrews v. Plains All Am. Pipeline L.P.*, 2022 U.S. Dist. LEXIS 172183, at *11 (C.D. Cal.
7 2022) (finding that the requested service awards of \$15,000 each are appropriate); *Reynolds v. Direct*
8 *Flow Med., Inc.*, 2019 U.S. Dist. LEXIS 149865, at *19 (N.D. Cal. 2019) (granting request for \$12,500
9 service award); *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018)
10 (awarding \$12,500 where average class member payment was \$351); *Louie v. Kaiser Foundation*
11 *Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D. Cal. Oct. 06, 2008) (awarding \$25,000 service award
12 to each of six plaintiffs in overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862, *16-17
13 (N.D. Cal. 2007) (awarding \$25,000 service award in overtime class action and a pool of \$100,000 in
14 enhancements). As explained in *Glass*, service awards are routinely awarded to class representatives
15 to compensate the employees for the time and effort expended on the case, for the risk of litigation, for
16 the fear of suing an employer and retaliation there from, and to serve as an incentive to vindicate the
17 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 were filed, and during the course of litigation, and Class Counsel
24 and 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 these claims, as Class Counsel previously litigated and settled similar claims in other
27 actions. Accordingly, the agreement to settle did not occur until Class Counsel possessed sufficient
28 information to make an informed judgment regarding the likelihood of success on the merits and the
results that could be obtained through further litigation. Decl. Nordrehaug at ¶28.

1 Based on the foregoing data and their own independent investigation and evaluation, Class
2 Counsel is of the opinion that the Settlement with Defendant for the consideration and on the terms set
3 forth in the Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light
4 of all known facts and circumstances, including the risk of significant delay, defenses asserted by
5 Defendant, and numerous potential appellate issues. Decl. Nordrehaug at ¶29.

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

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

11 All individuals who are or previously were employed by Defendant in the State of
12 California on a non-exempt basis at any time during the Class Period who did not sign
arbitration agreements.

13 (Agreement at ¶ 1.5.)

14 The Class Period is from July 7, 2018 through January 7, 2024. (Agreement at ¶ 1.13)

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

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

19 Code of Civil Procedure Section 382 authorizes class actions “when the question is one
20 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
21 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
22 “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.

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

24 While Defendant reserves all rights to dispute that the Plaintiffs can satisfy these requirements,
25 the Parties agree that Defendant will not dispute that these requirements may be satisfied in this case
26 for purposes of settlement only and therefore, the proposed Class should be certified for purposes of
27 settlement only. (Agreement at ¶ 2.9.)

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

1 Plaintiffs bring this action on behalf of a Class of non-exempt employees of Defendant during
2 the Class Period. Plaintiffs assert that all of these individuals are ascertainable because the class
3 members can readily be determined through examination of Defendant's files. Given that the Class
4 consists of approximately 353 individuals, Plaintiffs maintain that numerosity is clearly satisfied. *See*
5 *Bowles v. Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose*
6 *v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity
7 requirement.) Here, Plaintiffs assert that the 353 current and former employees that comprise the Class
8 can be identified based on Defendant's records and are sufficiently numerous for class certification.
9 Decl. Nordrehaug at ¶30.

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

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

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

22 Here, Plaintiffs contend that common questions of law and fact are present, specifically the
23 common questions of whether Defendant's employment practices were lawful, whether Defendant
24 failed to provide meal and rest periods to Class Members, whether Class members were lawfully
25 compensated for all hours worked, whether Defendant miscalculated the regular rate when paying Class
26 Member overtime, meal period premiums and/or sick pay, whether Defendant failed to provide required
27 expense reimbursement, and whether Class Members are entitled to damages and penalties as a result
28 of these practices. Plaintiffs contend that certification of this Class is appropriate because Defendant
allegedly engaged in uniform practices with respect to the Class Members. As a result, these common

1 questions of liability could be answered on a class wide basis. Decl. Nordrehaug, ¶30. Defendant
2 disputes that common questions predominate but will not oppose such a finding for purposes of this
3 Settlement only.

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

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

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

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

21 Plaintiffs contends that the Class Members are adequately represented here because Plaintiffs
22 and representing counsel (a) do not have any conflicts of interest with other class members, and (b) will
23 prosecute the case vigorously on behalf of the class. *Hanlon*, 150 F.3d at 1020. This requirement is
24 met here. First, Plaintiffs are well aware of their duties as the representatives of the Class and have
25 actively participated in the prosecution of this case to date. Plaintiffs effectively communicated with
26 Class Counsel, provided documents and information to Class Counsel, and participated in the
27 investigation and resolution of the Action. The personal involvement of the Plaintiffs was essential to
28 the prosecution of the Action and the monetary settlement reached. Second, Plaintiffs retained
competent counsel who are experienced in employment class actions and who have no conflicts. Decl.

Nordrehaug at ¶ 31; Declaration of Stan Mallinson at ¶¶ 4-11; Declaration of Daniel Gaines at ¶¶ 2-5. Third, there is no antagonism between the interests of the Plaintiffs and those of the Class. Both the Plaintiffs and the Class Members seek monetary relief under the same set of facts and legal theories. Under such circumstances, there can be no conflicts of interest, and adequacy of representation is satisfied. *Reaves v. Ketoro, Inc.*, 2020 U.S. Dist. Lexis 167926, *23 (C.D. Cal. 2020). Defendant disputes that the adequacy requirement is satisfied but will not oppose such a finding for purposes of this Settlement only.

F. The Superiority Requirement Is Met

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

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

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

Here, Plaintiffs contend that a class action is the superior mechanism for resolution of the claims 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.

VI. THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE

The Court has broad discretion in approving a practical notice program. *7- Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1164 (2000). The Parties have agreed upon procedures by which the Class Members will be provided with written notice of the Settlement similar to that approved and utilized in hundreds of class action settlements and the Class Notice includes all relevant information and a Spanish translation. (See Exhibit “A” to the Agreement.) Decl. Nordrehaug at ¶32. The Class Notice will explain that the Class Members shall have sixty (60) days from the date that the Class Notice is mailed to them (the “Response Deadline”) to request exclusion

1 (opt-out) or to submit a written objection. (Agreement at ¶¶ 1.43, 8.5, 8.7.) Class Members shall be
2 given the opportunity to object to the Settlement and the request for attorneys' fees and expenses, and
3 to appear at the Final Approval Hearing. (Agreement at ¶ 8.7.) This notice program was designed to
4 meaningfully reach the Class Members and it advises them of all pertinent information concerning the
5 Settlement. Decl. Nordrehaug at ¶32. The distribution of the Class Notice satisfies the requirements
6 of due process and is the best notice practicable under the circumstances and complies with Rules of
7 Court 3.766 and 3.769(f).

8 **VII. CONCLUSION**

9 Plaintiffs respectfully request that the Court preliminarily approve the proposed settlement and
10 sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the final
11 approval hearing for the proposed date of October 1, 2024.

12 Respectfully submitted,

13 Dated: May 13, 2024

MALLISON & MARTINEZ

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15 By: /s/ Stan Mallison
16 Stan S. Mallison, Esq.
17 Attorney for Plaintiffs
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