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

15 DORIS VANESSA JACOBY, an
16 individual, on behalf of herself, and on
17 behalf of all persons similarly situated,

18 Plaintiff,

19 vs.

20 NORCAL HEALTHCONNECT, LLC, a
21 Limited Liability Company; and DOES 1
22 through 50, inclusive,

23 Defendants.

Case No. SCV-271141

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

Hearing Date: June 26, 2024
Hearing Time: 3:00 p.m.

Judge: Hon. Bradford DeMeo
Dept: 17

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Trial Date: Not set

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1 **I. INTRODUCTION**

2 Plaintiff Doris Vanessa Jacoby (“Plaintiff”) will move for an order: (1) preliminarily approving
3 the proposed settlement of this class action with Defendant NorCal HealthConnect, LLC (“Defendant”);
4 (2) for settlement purposes only, conditionally certifying the Class, which consists of both the Wage
5 and Hour Class and the Background Check Class; (3) provisionally appointing Plaintiff as the
6 representatives of the Class; (4) provisionally appointing Norman B. Blumenthal, Kyle R. Nordrehaug,
7 Aparajit Bhowmik, Nicholas J. De Blouw, Jeffrey S. Herman, and Sergio J. Puche of Blumenthal
8 Nordrehaug Bhowmik De Blouw LLP as Class Counsel for the Class; (5) approving the form and
9 method for providing notice to the Class of the proposed settlement; (6) directing that notice of the
10 proposed settlement be given to the Class; (7) appointing ILYM Group as the Administrator; and
11 (8) scheduling a final approval hearing date for November 6, 2024 to consider the Plaintiff’s motion
12 for final approval of the settlement and for approval of attorneys’ fees, expenses and the service award.
13 Plaintiff and Defendant have reached a full and final settlement of the above-captioned action, which
14 is set forth in the Class Action and PAGA Settlement Agreement (the “Agreement”) filed concurrently
15 with the Court.¹ A copy of the fully executed Agreement is attached as Exhibit #1 to the Declaration
16 of Kyle Nordrehaug (“Decl. Nordrehaug”), served and filed herewith, and the form of the Agreement
17 is based on the Los Angeles Superior Court model form for class and PAGA settlements. A redline
18 comparison between the Agreement and the Court’s model form for a class and PAGA settlement is
19 attached as Exhibit #2 to the Decl. Nordrehaug.

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

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

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

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

8 **\$1,000,000** (Gross Settlement Amount)

- 9 - \$20,000 (Plaintiff’s proposed service award not to exceed amount)
- 10 - \$40,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- 11 - \$333,333 (Class Counsel Fees Payment - not to exceed one-third of settlement)
- 12 - \$40,000 (PAGA Penalties - 75% to LWDA / 25% to Aggrieved Employees)
- 13 - \$17,000 (Administration Expenses Payment - not to exceed amount)
- 14 - \$38,250 (Background Check Class Payments - \$50 x 765)

15 **\$549,667** (Net Settlement Amount for Individual Class Payments)

16 Based upon 1,297 Wage and Hour Class Members who collectively worked 128,976 Workweeks
17 (Agreement at ¶ 4.1), the Gross Settlement Amount provides a value of \$771 per Class Member and
18 \$7.75 per Workweek and, after deductions, the Net Settlement Amount provides an average recovery
19 of \$394.30 per Class Member and \$3.96 per Workweek. Decl. Nordrehaug at ¶6.

20 On June 6, 2023, the Parties participated in an all-day mediation session presided over by
21 Tripper Ortman, Esq., a respected and experienced mediator of wage and hour class actions. Following
22 this mediation, the Parties reached an agreement to settle the Action. Decl. Nordrehaug at ¶5. The
23 Settlement is fair, reasonable and adequate, and should be preliminarily approved because there is a
24 substantial monetary payment, and there are substantial litigation and class-certification risks.
25 Therefore, Plaintiff respectfully requests that this Court grant preliminary approval of the Agreement
26 and enter the proposed order submitted herewith.

27 **II. DESCRIPTION OF THE SETTLEMENT**

28 The Gross Settlement Amount is One Million Dollars (\$1,000,000). (Agreement at ¶ 1.22.)
Under the Settlement, the Gross Settlement Amount consists of the following elements: (i) all
Individual Class Payments, Background Check Class Payments, and Individual PAGA Payments; (ii)
the LWDA PAGA Payment; (iii) the Class Counsel Fees Payment and the Class Counsel Litigation

1 Expenses Payment; (iv) the Class Representative Service Payment; and (v) the Administration Expenses
2 Payment. (Agreement at ¶ 1.22.) The Gross Settlement Amount does not include Defendant's share
3 of payroll taxes. (Agreement at ¶ 3.1.) The Gross Settlement Amount shall be all-in with no reversion
4 to Defendant. (Agreement at ¶ 3.1.) Decl. Nordrehaug at ¶15.

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

10 The amount remaining in the Gross Settlement Amount after the deduction of Court-approved
11 amounts for Individual PAGA Payments, the LWDA PAGA Payment, the Class Representative Service
12 Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the
13 Administration Expenses Payment (the "Net Settlement Amount") shall be allocated to Participating
14 Class Members as their Individual Class Payments and Background Class Check Payments.
15 (Agreement at ¶¶ 1.32 and 3.2(e).) From the Net Settlement Amount, first, a Background Check Class
16 Payment paid out at a flat rate of \$50 per individual. Second, the Individual Class Payment for each
17 Participating Class Member will be calculated by (i) dividing the Net Settlement Amount (after
18 deducting the Background Class Check Payments) by the total number of Workweeks worked by all
19 Participating Class Members during the Class Period and (b) multiplying the result by each Participating
20 Class Member's Workweeks. (Agreement at ¶ 3.2(e).) Workweeks will be calculated based on
21 Defendant's records; however, Class Members will have the right to challenge their number of
22 Workweeks. Decl. Nordrehaug at ¶17.

23 Class Members may choose to opt-out of the Settlement by following the directions in the Class
24 Notice. (Agreement at ¶ 8.5, Ex. A.) All Class Members who do not "opt out" will be deemed
25 Participating Class Members and will be bound by the Settlement and will be entitled to receive an
26 Individual Class Payment. (Agreement at ¶ 8.5(c).) All Aggrieved Employees, including any who
27 submit an opt-out request, still will receive an Individual PAGA Payment and will release of the
28 Released PAGA Claims regardless of their request for exclusion. (Agreement at ¶¶ 6.3 and 8.5(d))

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

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

9 Subject to Court approval, the Parties have agreed on ILYM Group to administer the settlement
10 in this action (the "Administrator"). (Agreement at ¶ 1.2.) The Administrator will be paid for
11 settlement administration in an amount not to exceed \$17,000. (Agreement at ¶ 3.2(c).) Decl.
12 Nordrehaug at ¶20. A Declaration from ILYM is submitted herewith. See Decl. Nordrehaug at ¶37.

13 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
14 to exceed one-third of the Gross Settlement Amount as the Class Counsel Fees Payment. (Agreement
15 at ¶ 3.2(b).) Class Counsel will also be allowed to apply for an award of Class Counsel Litigation
16 Expenses Payment in an amount not to exceed \$40,000. (Agreement at ¶ 3.2(b).) Subject to Court
17 approval, the Agreement provides for a payment not to exceed \$20,000 to Plaintiff as the Class
18 Representative Service Payment. (Agreement at ¶ 3.2(a).) Decl. Nordrehaug at ¶21.

19 Subject to Court approval, Forty Thousand Dollars (\$40,000) will be paid from the Gross
20 Settlement Amount in settlement of Plaintiff's claim for civil penalties under the California Labor Code
21 Private Attorneys General Act ("PAGA"), Cal. Labor Code Section 2698, *et seq.* Pursuant to the
22 express requirements of Labor Code § 2699(i), the PAGA Penalties payment shall be allocated as
23 follows: 75% (\$30,000) shall be allocated to the LWDA as its share of the civil penalties and 25%
24 (\$10,000) allocated to the Aggrieved Employees and distributed as Individual PAGA Payments based
25 on the number of their respective PAGA Pay Periods. (Agreement at ¶ 3.2(d).) As set forth in the
26 accompanying proof of service, the LWDA has been served with this motion and the Agreement. Decl.
27 Nordrehaug at ¶22.

1 **III. CASE BACKGROUND**

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

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

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

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

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

1 1982).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 at
15 1794. Preliminary approval does not require the trial court to answer the ultimate question of whether
16 a proposed settlement is fair, reasonable and adequate. That final determination is made only after
17 notice of the settlement has been given to the class members and after they have been given an
18 opportunity to voice their views of the settlement or to be excluded from the settlement. 3B J. Moore,
19 *Moore's Federal Practice* §§23.80 - 23.85 (2003).

20 In considering a potential settlement for preliminary approval purposes, the trial court need not
21 reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute,
22 and need not engage in a trial on the merits. *Wershba, supra*, 91 Cal.App.4th at 239-40; *Dunk, supra*,
23 48 Cal.App. 4th at 1807. The Ninth Circuit explains, “the very essence of a settlement is compromise,
24 ‘a yielding of absolutes and an abandoning of highest hopes.’” *Officers for Justice*, 688 F.2d at 624.

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

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

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

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

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

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

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

16 The Parties attended an arms-length mediation session with Tripper Ortman, a respected and
17 experienced mediator of wage and hour class actions, to reach the Settlement. In preparation for the
18 mediation, Defendant provided Class Counsel with necessary information, including the Class payroll
19 and timekeeping data. Plaintiff analyzed the data with the assistance of a damages expert, Berger
20 Consulting, and prepared and submitted a mediation brief and damage valuation to the Mediator.
21 Following the all-day mediation, the Parties agreed to the Settlement, which was memorialized in the
22 form of a Memorandum of Understanding. The final terms of the Settlement were negotiated and set
23 forth in the Agreement now presented for this Court's approval. Decl. Nordrehaug at ¶ 5. Importantly,
24 Plaintiff and Class Counsel believe that this Settlement is fair, reasonable and adequate.

25 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant is
26 One Million Dollars (\$1,000,000). The Settlement is all-in with no reversion to Defendant and no need

27 ³ The release applicable to the Class is tethered to allegations in the Action. (Agreement at ¶¶ 1.43,
28 1.44, 6.2, and 6.3.)

1 for Class Members to submit claim forms. Decl. Nordrehaug at ¶3.

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

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

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

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

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

1 approval. All Class Members will receive an opportunity to participate in the Settlement and receive
2 payment according to the same formula. (Agreement at ¶ 3.2(e).) Based upon 1,297 Wage and Hour
3 Class Members who collectively worked 128,976 Workweeks (Agreement at ¶ 4.1), the Gross
4 Settlement Amount provides a value of \$771 per Class Member and \$7.75 per Workweek and, after
5 deductions, the Net Settlement Amount provides an average recovery of \$394.30 per Class Member and
6 \$3.96 per Workweek. Decl. Nordrehaug, ¶6.

7 The calculations to compensate for the amount due to the Class Members at the time the
8 Settlement was negotiated were calculated by Plaintiff's expert, Berger Consulting, in advance of
9 mediation. Class Counsel analyzed the data for putative class members and determined the potential
10 maximum damages for the class claims. For the Class, the maximum value of the claim for unpaid
11 wages due to the alleged unpaid overtime was \$2,678,992.74, the maximum value of the claim for
12 unpaid wages due to alleged off-the-clock work was \$3,571,990.32, the maximum value of unpaid sick
13 pay was \$84,730, the maximum potential damages for alleged meal period violations were estimated
14 to be \$1,689,505.78 after deduction of meal premiums already paid by Defendant, the maximum
15 potential damages for alleged rest period violations were estimated to be \$3,574,990.32 after deduction
16 of rest premiums already paid by Defendant, and the maximum potential damages for the alleged failure
17 to reimburse business expenses were calculated to be \$206,738 based upon \$5 per month. In total, the
18 damages for the Class were calculated to have a maximum potential total value of \$11,806,947. In
19 addition, Plaintiff calculated that the maximum value of the potential waiting time penalties were
20 between \$1,015,109 and \$9,014,169, depending on the predicate violation, and the maximum value of
21 the potential wage statement penalties were \$3,323,900.⁴ Decl. Nordrehaug, ¶6.

22 Consequently, the Gross Settlement Amount represents more than 8% of Plaintiff's calculation
23

24
25 ⁴ While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and 226,
26 at mediation Plaintiff recognized that these claims were subject to additional, separate defenses asserted
27 by Defendant, including but not limited to, a good-faith dispute defense as to whether any premium
28 wages for meal or rest periods or other wages were owed given Defendant's position that Plaintiff 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 of the potential maximum damages at issue for the Class in this case, assuming these amounts could
2 all be proven in full at trial.⁵ The maximum calculations should then be realistically risk rated in
3 consideration for both the risk of class certification and the risk of establishing class-wide liability on
4 all claims.

5 As to the Background Check Class, FCRA provides for statutory damages of \$100 to \$1,000
6 per willful violation. 15 U.S.C. § 1681n. This means the maximum value of the FCRA claim for the
7 965 individuals in the FCRA Class is between \$765,000 and \$7,650,000. A comparison of approved
8 FCRA settlements involving similar facts further confirms the reasonableness of this Settlement. The
9 Court in *Pietras v. Sentry Ins. Co.*, 513 F. Supp. 2d 983, 985 (N.D. Ill 2007), "cited eighteen cases,
10 which settled for an average of \$34.59 per class member." Similarly, in *Bailes v. Lineage Logistics,*
11 *LLC*, 2016 U.S. Dist. LEXIS 110943 (D. Kan 2016), the District Court approved a FCRA class
12 settlement which provided for a fund of \$149,205 for a class of 3,430, which correlates to \$43.50 per
13 person. In *Feist v. Petco Animal Supplies, Inc.*, 2018 U.S. Dist. LEXIS 98686 (S.D. Cal. 2018), Judge
14 Marilyn Huff granted preliminary approval to an FCRA class settlement of \$1.2 million for a class of
15 37,000, which equates to \$32.43 per person.⁶ Here, the Settlement allocation of \$50 per FCRA Class
16 Member is certainly fair and reasonable given the prior approved FCRA settlements and the defenses
17 asserted by Defendant. Given the amount of the Settlement as compared to the potential value of the
18 claims, the Settlement is most certainly fair and reasonable.⁷ Clearly, the goal of this litigation has been

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

22 ⁶ See also *Moore v. Aerotek, Inc.*, 2017 WL 2838148, at *4 (S.D. Ohio 2017) (per-capita gross
23 recovery of \$25 in FCRA case); *Aceves v. Autozone Inc.*, No. 5:14-cv-2032, ECF No. 58 (C.D. Cal.
2016) (approval of FCRA settlement with gross recovery of \$20 per class member); *Patrick v. Interstate*
24 *Mgmt. Co., LLC*, No. 8:15-cv-1252, ECF No. 42 (M.D. Fla. 2016) (approval of FCRA claim where class
25 members received \$9 each); *Landrum v. Acadian Ambulance Serv., Inc.*, No. 14-cv-1467, ECF No. 37
26 (S.D. Tex. 2015) (approval of FCRA disclosure settlement of \$10 per person); *Walker v.*
McClane/Midwest, Inc., No. 2:14-cv-04315, ECF No. 29 (W.D. Mo. 2015) (\$24 per person).

27 ⁷ See *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)
28 approving settlement which represented "roughly one-sixth of the potential recovery"; *Stovall-Gusman*
v. W.W. Granger, Inc., 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval

1 met. Decl. Nordrehaug, ¶6.

2 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
3 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
4 Defendant present serious threats to the claims of the Plaintiff and the other Class Members. Defendant
5 maintains that its practices complied with all applicable wage and hour laws. Defendant maintains that
6 all Class Members' work time was properly recorded and compensated and that there was no unpaid
7 overtime. Defendant also argued that any unpaid overtime attributable to workers subject to a CBA is
8 not compensable overtime under the CBA. Defendant contends that its meal and rest period policies
9 and practices provide Class Members with meal and rest periods and that the payment of significant
10 meal premiums is evidence of Defendant's legal compliant practices. As to expense reimbursement,
11 Defendant maintains that it did not fail to provide reimbursement for necessary business expenses
12 because, among other things, employees are not required to use their personal cell phones to perform
13 their work. Defendant could argue that the decisions in *Brinker v. Superior Court*, 53 Cal. 4th 1004
14 (2012), *Lockheed Martin Corp. v. Superior Ct.*, 29 Cal. 4th 1096, 1108 (2003), and *Salazar v. See's*
15 *Candy Shops Inc.*, 64 Cal.App.5th 85 (2021), weakened Plaintiff's claims in terms of liability and value,
16 and preclude claims from proceeding on a class or representative basis. Defendant also maintains that
17 a good faith dispute and absence of willfulness would negate the claims for waiting time penalties
18 and/or failure to provide accurate itemized wage statements. See e.g. *Naranjo v. Spectrum Sec. Servs.*,
19 2024 Cal. Lexis 2438, at *3 (May 6, 2024) ("if an employer reasonably and in good faith believed it was
20 providing a complete and accurate wage statement in compliance with the requirements of section 226,
21 then it has not knowingly and intentionally failed to comply with the wage statement law.") If
22 successful, Defendant's defenses could eliminate or substantially reduce any recovery to the Class.
23 While Plaintiff believes that these defenses could be overcome, Defendant maintains these defenses
24 have merit and therefore present a serious risk to recovery by the Class. Decl. Nordrehaug, ¶ 24.

25 _____
26 where "the proposed Total Settlement Amount represents approximately 10% of what class might have
27 been awarded had they succeeded at trial."; *Viceral v. Mistras Grp., Inc.*, 2016 WL 5907869 (N.D. Cal.
28 2016) (approving wage and hour class action settlement amounting to 8.1% of full verdict value); *Ma*
v. Covidien Holding, Inc., 2014 WL 2472316, (C.D. Cal. 2014) (approving wage and hour class action
settlement worth "somewhere between 9% and 18%" of full verdict value).

1 There was also a significant risk that, if the Action was not settled, Plaintiff would be unable
2 to obtain class certification and thereby not recover on behalf of any employees other than themselves.
3 Defendant argued that the individual experience of each putative class member varied with respect to
4 the claims, which would preclude the claims from proceeding on a class basis. For instance, Plaintiff's
5 meal and rest period claims would require individualized inquiries into whether each employee took
6 a compliant meal or rest period on a given shift and, if not, why. Plaintiff is aware of other cases where
7 class certification of similar claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th 885
8 (2019) (denying certification of rest break claims). Finally, even if class certification was successful,
9 as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National Association*,
10 59 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class-wide recovery even where
11 a class has been certified. While other cases have approved class certification of wage and hour claims,
12 class certification in this Action would have been hotly disputed and was by no means a foregone
13 conclusion. Decl. Nordrehaug, ¶ 25.

14 After arm's-length negotiations between experienced and informed counsel, the Parties
15 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of
16 \$1,000,000.00. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

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

23 2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
24 (9th Cir. 2000)).

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

27 The relief provided in the Settlement will benefit all members of the Class. The Settlement does
28 not grant preferential treatment to Plaintiff 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 Workweeks worked by that individual. Decl. Nordrehaug, ¶4.

1 Plaintiff will apply to the Court for a Class Representative Service Payment in consideration for
2 her service and for the risks undertaken on behalf of the Class. (Agreement at ¶ 3.2(a).) Plaintiff
3 performed her duties admirably by working with Class Counsel and is providing a general release of
4 all claims relating to her employment. Decl. Nordrehaug at ¶27. The concurrently filed declaration of
5 the Plaintiff is presented herewith in support of the request. For purposes of this preliminary approval
6 stage, the requested service award of is within the accepted range of awards for purposes of preliminary
7 approval. *See, e.g., Andrews v. Plains All Am. Pipeline L.P.*, 2022 U.S. Dist. LEXIS 172183, at *11
8 (C.D. Cal. 2022) (finding that the requested service awards of \$15,000 each are appropriate); *Reynolds*
9 *v. Direct Flow Med., Inc.*, 2019 U.S. Dist. LEXIS 149865, at *19 (N.D. Cal. 2019) (granting request
10 for \$12,500 service award); *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D.
11 Cal. 2018) (awarding \$12,500 where average class member payment was \$351); *Louie v. Kaiser*
12 *Foundation Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D.Cal. Oct. 06, 2008) (awarding \$25,000
13 service award to each of six plaintiffs in overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL
14 221862, *16-17 (N.D. Cal. 2007) (awarding \$25,000 service award in overtime class action and a pool
15 of \$100,000 in enhancements). As explained in *Glass*, service awards are routinely awarded to class
16 representatives to compensate them for the time and effort expended on the case, for the risk of
17 litigation, for the fear of suing an employer and retaliation therefrom, and to serve as an incentive to
18 vindicate the statutory rights of all employees. 2007 WL 221862 at *16-17.

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

21 The stage of the proceedings at which the Settlement was reached also militates in favor of
22 preliminary approval and, ultimately, final approval of the Settlement. Class Counsel has conducted
23 a thorough investigation into the facts of the class action. Class Counsel began investigating the Class
24 Members' claims before the Action was filed. Class Counsel engaged in an investigation of the claims
25 and 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 both formal and informal discovery of data and documents, and their own independent
3 investigation and evaluation, Class Counsel is of the opinion that the Settlement with Defendant for the
4 consideration and on the terms set forth in the Agreement is fair, reasonable, and adequate and is in the
5 best interest of the Class in light of all known facts and circumstances, including the risk of significant
6 delay, defenses asserted by Defendant, and numerous potential appellate issues. There can be no doubt
7 that counsel for both Parties possessed sufficient information to make an informed judgment regarding
8 the likelihood of success on the merits and the results that could be obtained through further litigation.
9 Decl. Nordrehaug at ¶29.

10 In *Glass*, the Northern District of California granted final approval of an overtime wage action
11 although in *Glass* no formal discovery had been conducted prior to the settlement. *Glass*, 2007 U.S.
12 Dist. LEXIS 8476 at *14 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d at 459).
13 Here, Class Counsel was in a stronger good position to evaluate the fairness of this Settlement because
14 Class Counsel received relevant documents and data through formal and informal discovery, evaluated
15 the information with the assistance of an expert, and performed independent investigations and due
16 diligence to confirm the accuracy of the information supplied by Defendant.

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

18 Plaintiff contends that the Settlement meets all of the requirements for certification of a
19 settlement class under California Code of Civil Procedure § 382 as demonstrated below, and therefore,
20 the Court may appropriately approve the Class as defined in the Agreement. This Court should
21 conditionally certify the Class for settlement purposes only which consists of “the Wage and Hour Class
22 and the Background Check Class.” (Agreement at ¶ 1.9.) This Court should conditionally certify the
23 Wage and Hour Class for settlement purposes only, defined as follows:

24 All individuals who were employed by Defendant in California and classified as a
25 non-exempt employee at any time during the Class Period.

26 (Agreement at ¶ 1.50.)

27 The "Class Period" is July 8, 2018 through October 15, 2023. (Agreement at ¶ 1.17.) This Court should
28 also conditionally certify the Background Check Class for settlement purposes only, defined as follows:

1 All individuals who executed Defendant's background check disclosure form at any time
2 during the Background Check Class Period.

3 (Agreement at ¶ 1.5.)

4 The Background Check Class Period is July 8, 2020 through October 15, 2023. (Agreement at ¶ 1.8.)

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

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

8 Code of Civil Procedure Section 382 authorizes class actions “when the question is one
9 of a common or general interest, of many persons, or when the parties are numerous, and
10 it is impracticable to bring them all before the court...” The party seeking certification
11 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.

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

13 Plaintiff contends that the proposed Class satisfies the criteria for certification under Code of
14 Civil Procedure section 382. Defendant disputes that Plaintiff can satisfy any of these requirements for
15 class certification in the litigation context, but does not oppose certification for purposes of the
16 Settlement. Accordingly, the proposed Class should be certified for purposes of the Settlement only.
17 (Agreement at ¶ 2.10.)

18 **1. Ascertainability And Numerosity.**

19 Plaintiff brings this Action on behalf of a Class of non-exempt employees who worked for
20 Defendant during the applicable Class Period. Plaintiff asserts that all of these individuals are
21 ascertainable because the class members can readily be determined through examination of Defendant’s
22 files. Given that the Class consists of approximately 1,297 members, Plaintiff maintains that
23 numerosity is clearly satisfied. *See Bowles v. Superior Court*, 44 Cal.2d 574 (1955) (class with 10
24 members sufficiently numerous); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of
25 48 members satisfies numerosity requirement.) Here, Plaintiff asserts that the 1,297 individuals who
26 comprise the Class can be identified based on Defendant’s records and are sufficiently numerous for
27 class certification. Decl. Nordrehaug at ¶30.

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

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

6 Commonality exists if there is a predominant common legal question regarding how an
7 employer’s policies impact its employees. *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524,
8 1536 (2008) (“[T]he common legal question remains the overall impact of Diva's policies on its
9 drivers.”) Whether the plaintiff is likely to prevail on their theory of recovery is irrelevant at the
10 certification stage since the question is “essentially a procedural one that does not ask whether an action
11 is legally or factually meritorious.” *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2003).

12 Here, Plaintiff contends that common questions of law and fact are present, and specifically the
13 common questions of whether Defendant’s practices were lawful, whether Class members were lawfully
14 compensated for all hours worked, whether Defendant properly paid overtime, whether the Defendant
15 failed to provide all legally required meal and rest periods to Class Members, whether Defendant failed
16 to provide required expense reimbursement, and whether Class Members are entitled to damages and
17 penalties as a result of these alleged practices. Decl. Nordrehaug, ¶30.

18 3. Typicality.

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

25 In the Action, Plaintiff contends that there can be little doubt that the typicality requirement is
26 satisfied. Plaintiff worked for Defendant as non-exempt employee during the Class Period. Plaintiff
27 contends that, like every other member of the Class, she was subjected to the same practices and
28 policies of Defendant and is subject to the same defenses. Thus, Plaintiff asserts that the claims of

1 Plaintiff and the Class Members arise from the same course of conduct by the Defendant, involve the
2 same employment policies and practices of Defendant, and are based on the same legal theories. Decl.
3 Nordrehaug at ¶30. For purposes of settlement, Plaintiff maintains that the typicality requirement is met
4 as to the common issues presented in this case.

5 **4. Adequacy.**

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

15 **5. Superiority.**

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

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

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

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

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

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

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

19 The Class Notice will state that the Class Members shall have sixty (60) days from the date that
20 the Notice is mailed to them (the “Response Deadline”) to request exclusion (opt-out), and that the
21 Response Deadline shall be extended 14 days in the event of a re-mailing. (Agreement at ¶¶ 1.43,
22 8.5(a).) Class Members shall be given the opportunity to object to the Settlement and/or requests for
23 attorneys’ fees and expenses and to appear at the Final Approval Hearing. (Agreement at ¶ 8.7.) Class
24 Members who do not submit a timely and proper request to opt out will automatically receive a payment
25 of their Individual Class Payment (and, if applicable, their Individual PAGA Payment). This notice
26 program was designed to meaningfully reach the Class Members and it advises them of all pertinent
27 information concerning the Settlement. Decl. Nordrehaug at ¶32. The mailing and distribution of the
28 Class Notice satisfies the requirements of due process, is the best notice practicable under the

1 circumstances, and complies with Rules of Court 3.766 and 3.769(f).

2 **VII. CONCLUSION**

3 Based on the foregoing, Plaintiff respectfully requests that the Court preliminarily approve the
4 proposed settlement and sign the proposed Preliminary Approval Order, which is submitted herewith,
5 and schedule the final approval hearing for November 6, 2024.

6 Dated: June 3, 2024

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

7 By: /s/ Kyle Nordrehaug
8 Kyle R. Nordrehaug, Esq.
9 Attorney for Plaintiff
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