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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF PLACER**

MONICA CUTHBERT, SHERRI MAYER,
BELA CRISPIN, CORRINE
SALAZAR-ROSE, individuals, on behalf of
themselves and on behalf of all persons
similarly situated,

Plaintiffs,

vs.

AMERICAN PACIFIC MORTGAGE
CORPORATION, a California Corporation;
and DOES 1 through 50, inclusive,

Defendants.

CASE NO.: S-CV-0049369

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

Hearing Date: July 23, 2024
Hearing Time: 8:30 a.m.

Judge: Hon. Trisha Hirashima
Department: 42

Action Filed: October 27, 2022
Trial Date: Not set

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1 **I. INTRODUCTION**

2 Plaintiffs Monica Cuthbert, Bela Crispin, Sherri Mayer, and Corrine Salazar-Rose (“Plaintiffs”)
3 respectfully submit this memorandum in support of the unopposed motion for preliminary approval of
4 the proposed class action settlement with Defendant American Pacific Mortgage Corporation
5 (“Defendant”), and seek entry of an order: (1) preliminarily approving the proposed settlement of this
6 class action with Defendant; (2) for settlement purposes only, conditionally certifying the Class, which
7 is comprised of “all individuals who were employed by Defendant in California and classified as a
8 non-exempt employee at any time during the Class Period who did not sign an arbitration agreement,
9 and excluding non-exempt employees who were employed by Defendant as loan officer assistants or
10 processors, or who performed equivalent duties to loan officer assistants and processors, up to February
11 18, 2020”; (3) provisionally appointing Plaintiffs as the representatives of the Class; (4) provisionally
12 appointing Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik, Nicholas J. De Blouw,
13 Jeffrey S. Herman, Sergio J. Puche, and Trevor G. Moran of Blumenthal Nordrehaug Bhowmik De
14 Blouw LLP as Class Counsel; (5) approving the form and method for providing class-wide notice;
15 (6) directing that notice of the proposed settlement be given to the class; (7) appointing Apex Class
16 Action as Administrator, and (8) scheduling a final approval hearing date, proposed for December 3,
17 2024 to consider Plaintiffs’ motion for final approval of the settlement and for approval of attorneys’
18 fees and expenses. Plaintiffs and Defendant (collectively the “Parties”) have reached a full and final
19 settlement of the above-captioned action, which is set forth in the Class Action and PAGA Settlement
20 Agreement (“Agreement”) filed concurrently with the Court.¹ A copy of the fully executed Agreement
21 is attached as Exhibit #1 to the Declaration of Kyle Nordrehaug (“Decl. Nordrehaug”), served and filed
22 herewith. The form of the Agreement is based upon the Los Angeles County Superior Court model
23 form for a class and PAGA settlement.

24 As consideration for this Settlement, the non-reversionary Gross Settlement Amount of Six
25 Hundred Thousand Dollars (\$600,000.00) (the “Gross Settlement Amount”) is to be paid by Defendant,
26 as set forth in the Agreement. The Gross Settlement Amount will settle all issues pending in the Action
27

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

1 between the Parties and will be made in full and final settlement of the Released Class Claims in
2 exchange for the payments to Participating Class Members from the Net Settlement Amount, and
3 includes (a) the costs of administration of the settlement, (b) all attorneys' fees and costs, (c) Class
4 Representative Service Payments, and (d) the PAGA Penalties payment allocated 75% to the LWDA
5 and 25% to the Aggrieved Employees. (Agreement at ¶ 1.24.) Decl. Nordrehaug at ¶3. The following
6 is a table of the key Settlement terms and the proposed deductions:

7	\$600,000 (Gross Settlement Amount)
8	- \$50,000 (Plaintiffs' proposed service awards not to exceed \$12,500 each)
9	- \$25,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
10	- \$200,000 (Class Counsel Fees Payment - not to exceed 1/3 of settlement)
	- \$50,000 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
	- \$20,000 (Administration Expenses Payment - not to exceed amount)
	\$255,000 (Net Settlement Amount)

11 Based upon 310 Class Members who worked an estimated 25,000 work weeks (Agreement at ¶ 4.1),
12 the Gross Settlement Amount provides an average value of \$1,935 per Class Member and \$24 per
13 workweek and after deductions the Net Settlement Amount provides an average recovery of \$822.58
14 per Class Member and a recovery of \$10.20 per workweek. Decl. Nordrehaug at ¶6.

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

22 **II. DESCRIPTION OF THE SETTLEMENT**

23 The Gross Settlement Amount is Six Hundred Thousand Dollars (\$600,000). (Agreement at
24 ¶ 1.24.) Under the Settlement, the Gross Settlement Amount consists of the following elements: (1)
25 payment of the Individual Class Payments to the Participating Class Members; (2) Class Counsel Fees
26 Payment and Class Counsel Litigation Expenses Payment; (3) Administration Expenses Payment; (4)
27 the Class Representative Service Payments to the Plaintiffs; and (5) the PAGA Penalties payment.
28 (Agreement at ¶ 1.24.) The Gross Settlement Amount does not include Defendant's share of payroll

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

3 The Agreement contains appropriate terms which have been previously approved by this Court
4 and Courts throughout California. (See Agreement at ¶¶ 1.30, 3.2, 4.3, 5.1.) The proposed Class
5 Notice also provides the required protections for the Class to opt out, object or dispute their weeks
6 worked. (See Agreement at ¶¶ 8.5, 8.6, 8.7, and Exhibit A.) The additional details of the Settlement
7 are addressed in the Decl. Nordrehaug at ¶¶ 16-22. As set forth in the accompanying proof of service,
8 the LWDA has been served with this motion and the Agreement.

9 **III. CASE BACKGROUND**

10 The description of the case and claims, along with the procedural history is set forth in the
11 Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and the
12 exchange of documents and information in connection with the Action for more than one year which
13 permitted Class Counsel to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10, 14.
14 The Parties participated in a mediation on August 15, 2023 with Tripper Ortman, which after arms'
15 length negotiations during and after the mediation, resulted in this Settlement. Decl. Nordrehaug, ¶12.

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

17 California "[p]ublic policy generally favors the compromise of complex class action litigation."
18 *Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 581 (2010) quoting *Cellphone Termination Fee*
19 *Cases*, 180 Cal.App.4th 1110, 1117-18 (2009). Class action settlements are approved where the
20 proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
21 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982), cert.
22 denied, 459 U.S. 1217 (1983)).

23 Preliminary approval is the first of three steps that comprise the approval procedure for
24 settlements of class actions. The second step is the dissemination of notice of the settlement to all class
25 members. The third step is a final settlement approval hearing, at which evidence and argument
26 concerning the fairness, adequacy, and reasonableness of the settlement may be presented, and class
27 members may be heard regarding the settlement. *See Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
28

1801 (1996); *Manual for Complex Litigation, Second* §30.44 (1993); Cal. Rules of Court, rule 3.769.

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

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

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

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

hypothetical or speculative measure of what might have been achieved by the negotiators.” *Officers for Justice*, 688 F.2d at 625, 628.

With regard to class action settlements, the opinions of counsel should be given considerable weight both because of counsel’s familiarity with this litigation and previous experience with cases such as these. *Officers for Justice*, 688 F.2d at 625. As a result, courts hold that the recommendation of 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 Preliminarily 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 ¶¶ 1.42 and 6.2.)

Class Counsel are experienced and qualified to evaluate the class claims, the defenses asserted,

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

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

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

27 Here, there can be no dispute that the litigation has been hard-fought with aggressive and
28 capable advocacy on both sides. The Parties were represented by experienced and capable counsel who

1 zealously advocated their positions. Accordingly, “[t]here is likewise every reason to conclude that
2 settlement negotiations were vigorously conducted at arms’ length and without any suggestion of undue
3 influence.” *In re Wash. Public Power Supply Sec. Litig.*, 720 F. Supp. 1379, 1392 (D. Ariz 1989).

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

6 The proposed Settlement herein has no "obvious deficiencies" and is well within the range of
7 possible approval. All Class Members will receive an opportunity to participate in the Settlement and
8 receive payment according to the same formula. (Agreement at ¶ 3.2(e).) Based upon 310 Class
9 Members who worked an estimated 25,000 work weeks (Agreement at ¶ 4.1), the Gross Settlement
10 Amount provides an average value of \$1,935 per Class Member and \$24 per workweek and after
11 deductions the Net Settlement Amount provides an average recovery of \$822.58 per Class Member and
12 a recovery of \$10.20 per workweek. Decl. Nordrehaug, ¶6.

13 The calculations to compensate for the amount due for the Class at the time of the mediation
14 were calculated by Berger Consulting, Plaintiffs’ damage expert. As to the Class whose claims are at
15 issue in this Action, Plaintiffs used the expert to analyze the data and determine the potential unpaid
16 wages for the employees. The maximum potential damages were calculated to be \$261,906 for alleged
17 reporting time wages, \$779,538 for the alleged unpaid wages for off-the-clock work at one hour per
18 week, \$84,038 for the alleged unpaid wages due to miscalculation of the regular rate when paying
19 wages, \$105,152 for the alleged underpayment of sick pay, \$1,570,836 for alleged meal period damages
20 based upon a 41.7% potential violation rate for all shifts worked, \$1,662,265 for alleged rest period
21 damages based upon the same 41.7% potential violation rate for shifts worked, \$26,450 for alleged
22 unreimbursed business expenses at \$5 per month. Decl. Nordrehaug, ¶6. As a result, the total damage
23 valuation was calculated that Defendants were subject to a maximum damage claim in the amount of
24 \$6,228,280. As to potential penalties, Plaintiffs calculated that potential waiting time penalties were
25 a maximum of between \$745,929 and \$1,030,092, and potential maximum wage statement penalties
26 were \$569,700.³ Defendant vigorously disputed Plaintiffs’ calculations and exposure theories. Decl.

27 ³ While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
28 226, at mediation Plaintiffs recognized that these claims were subject to additional, separate defenses

1 Nordrehaug, ¶6.

2 Consequently, the Gross Settlement Amount of \$600,000 represents more than 14% of the
3 maximum value of the alleged damages at issue in this case at the time this Settlement was negotiated.⁴
4 Importantly, the recent decision that good faith belief of compliance by the employer in *Naranjo v.*
5 *Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065 (2024), could completely negate the claims for
6 waiting time and wage statement penalties, even if wages were owed to the class. The above maximum
7 calculations should then be realistically risk adjusted in consideration for both the risk of class
8 certification and the risk of establishing class-wide liability on all claims. Given the amount of the
9 settlement as compared to the potential value of claims in this case and the defenses asserted by
10 Defendant, this settlement is fair and reasonable.⁵ Clearly, the goal of this litigation has been met.
11 Decl. Nordrehaug, ¶6.

12 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
13 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
14 Defendant present serious threats to the claims of the Plaintiffs and the other Class Members.
15 Defendant asserted that Defendant's practices complied with all applicable Labor laws. Defendant
16 argued that Class Members were paid for all time worked and that all work time was properly recorded.

17 _____
18 asserted by Defendant, including, a good faith dispute defense as to whether any premium wages for
19 meal or rest periods or other wages were owed given Defendant's position that Plaintiffs and Class
20 Members were properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584
21 (2010) ("There is no willful failure to pay wages if the employer and employee have a good faith dispute
22 as to whether and when the wages were due.").

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

26 ⁵ See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a
27 settlement where the settlement amount constituted approximately 25% of the estimated overtime
28 damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12
(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 Defendant maintained there was no miscalculation of the regular rate when paying wages to the
2 Plaintiffs and the Class. Defendant contend that their meal and rest period policies fully complied with
3 California law and that Defendant did not fail to provide the opportunity for legally required meal and
4 rest breaks. Defendant contends that there was no failure to pay for business expenses and any cell
5 phone usage was merely convenient and voluntary such that reimbursement was not legally required.
6 Finally, Defendant could argue that the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal.
7 4th 1004 (2012), weakened Plaintiffs' claims, on liability, value, and class certifiability as to the meal
8 and rest period claims. Defendant also argues that based on its facially lawful practices, Defendant
9 acted in good faith and without willfulness, which if accepted would negate the claims for waiting time
10 penalties and/or inaccurate wage statements. See e.g. *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th
11 1056, 1065 (2024) ("if an employer reasonably and in good faith believed it was providing a complete
12 and accurate wage statement in compliance with the requirements of section 226, then it has not
13 knowingly and intentionally failed to comply with the wage statement law.") If successful, Defendant's
14 defenses could eliminate or substantially reduce any recovery to the Class. While Plaintiffs believe that
15 these defenses could be overcome, Defendant maintains these defenses have merit and therefore present
16 a serious risk to recovery by the Class. Decl. Nordrehaug, ¶ 24.

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

26 After arm's length negotiations between experienced and informed counsel, the Parties
27 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of
28 \$600,000. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

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

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

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

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

14 Plaintiffs will apply to the Court for Class Representative Service Payments in consideration
15 for their service and for the risks undertaken on behalf of the Class. (Agreement at ¶ 3.2(a).) Plaintiffs
16 performed their duties admirably by working with Class Counsel over the course of litigation. The
17 Declaration of the Plaintiffs are submitted herewith in support. Decl. Nordrehaug at ¶27. At this stage,
18 the requested service award is within the range of reasonableness for purposes of preliminary approval.
19 See e.g. *Andrews v. Plains All Am. Pipeline L.P.*, 2022 U.S. Dist. LEXIS 172183, at *11 (C.D. Cal.
20 2022) (finding that the requested service awards of \$15,000 each are appropriate); *Reynolds v. Direct*
21 *Flow Med., Inc.*, 2019 U.S. Dist. LEXIS 149865, at *19 (N.D. Cal. 2019) (granting request for \$12,500
22 service award); *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018)
23 (awarding \$12,500 where average class member payment was \$351); *Louie v. Kaiser Foundation*
24 *Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D. Cal. Oct. 06, 2008) (awarding \$25,000 service award
25 to each of six plaintiffs in overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862, *16-17
26 (N.D. Cal. 2007) (awarding \$25,000 service award in overtime class action and a pool of \$100,000 in
27 enhancements). As explained in *Glass*, service awards are routinely awarded to class representatives
28 to compensate the employees for the time and effort expended on the case, for the risk of litigation, for
the fear of suing an employer and retaliation there from, and to serve as an incentive to vindicate the

1 statutory rights of all employees. 2007 WL 221862 at *16-17.

2 **4. The Stage Of The Proceedings Are Sufficiently Advanced To Permit**
3 **Preliminary Approval Of The Settlement**

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

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

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

20 Plaintiffs contend that the proposed settlement meet all of the requirements for class certification
21 under California Code of Civil Procedure § 382 as demonstrated below, and therefore, the Court may
22 appropriately approve the Class as defined in the Agreement. This Court should conditionally certify
23 the 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 who did not sign an
26 arbitration agreement, and excluding non-exempt employees who were employed by
27 Defendant as loan officer assistants or processors, or who performed equivalent duties
28 to loan officer assistants and processors, up to February 18, 2020.

(Agreement at ¶ 1.7.)

The Class Period is from October 27, 2023 through December 1, 2023. (Agreement at ¶ 1.15).

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

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

5 Code of Civil Procedure Section 382 authorizes class actions “when the question is one
6 of a common or general interest, of many persons, or when the parties are numerous,
7 and it is impracticable to bring them all before the court....” The party seeking
8 certification has the burden to establish the existence of both an ascertainable class and
9 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.

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

11 While Defendant reserves all rights to dispute that the Plaintiffs can satisfy these requirements,
12 the Parties agree that Defendant will not dispute that these requirements may be satisfied in this case
13 for purposes of settlement only and therefore, the proposed Class should be certified for purposes of
14 settlement only. (Agreement at ¶ 2.7.)

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

16 Plaintiffs bring this action on behalf of a Class of non-exempt employees of Defendants during
17 the Class Period. Plaintiffs assert that all of these individuals are ascertainable because the class
18 members can readily be determined through examination of Defendant’s files. Given that the Class
19 consists of approximately 310 individuals, Plaintiffs maintain that numerosity is clearly satisfied. *See*
20 *Bowles v. Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members); *Rose v. City of Hayward*, 126
21 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.) Here, Plaintiffs
22 assert that the 310 current and former employees that comprise the Class can be identified based on
23 Defendant’s records and are sufficiently numerous for class certification. Decl. Nordrehaug at ¶30.

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

25 Predominance of common issues of law or fact does not require that the common issues be
26 dispositive of the entire controversy or even that they be dispositive of all liability issues. 1 *Newberg*
27 *on Class Actions*, Section 4.25 at 4-82, 4-83 (1992). “Predominance is a comparative concept, and ‘the
28 necessity for class members to individually establish eligibility and damages does not mean individual

1 fact questions predominate.” *Sav-On*, 34 Cal. 4th at 334.

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

8 Here, Plaintiffs contend that common questions of law and fact are present, specifically the
9 common questions of whether Defendant’s employment practices were lawful, whether Defendant
10 failed to provide meal and rest periods to Class Members, whether Class members were lawfully
11 compensated for all hours worked, whether Defendants miscalculated the regular rate when paying
12 Class Member overtime and/or sick pay, whether Defendant failed to provide required expense
13 reimbursement, and whether Class Members are entitled to damages and penalties as a result of these
14 practices. Plaintiffs contend that certification of this Class is appropriate because Defendant allegedly
15 engaged in uniform practices with respect to the Class Members. As a result, these common questions
16 of liability could be answered on a class wide basis. Decl. Nordrehaug, ¶30. Defendant disputes that
17 common questions predominate but will not oppose such a finding for purposes of this Settlement only.

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

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

25 In this Action, Plaintiffs contend that the typicality requirement is fully satisfied. Plaintiffs, like
26 every other member of the Class, were employed by Defendant as non-exempt employees, and, like
27 every other member of the Class, were subject to the same employment practices. Plaintiffs, like every
28 other member of the Class, also claim owed compensation as a result of the Defendant’s uniform

1 company policies and practices. Thus, the claims of Plaintiffs and the members of the Class arise from
2 the same course of conduct by Defendant, involve the same issues, and are based on the same legal
3 theories. Decl. Nordrehaug at ¶30. Plaintiffs assert that the typicality requirement is met as to the
4 common issues presented in this case. Defendant disputes that the typicality requirement is satisfied
5 but do not oppose a finding of typicality for purposes of this Settlement only.

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

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

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

23 To certify a class, the Court must also determine that a class action is superior to other available
24 methods for the fair and efficient adjudication of the controversy. “Where classwide litigation of
25 common issues will reduce litigation costs and promote greater efficiency, a class action may be
26 superior to other methods of litigation.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir.
27 1996). As the Supreme Court has previously explained:
28

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

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

8 Here, Plaintiffs contend that a class action is the superior mechanism for resolution of the claims
9 as pled by the Plaintiffs. While Defendant disputes that the superiority requirement is satisfied but,
10 Defendant does not dispute a finding of superiority for purposes of this Settlement only.

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

12 The Court has broad discretion in approving a practical notice program. *7- Eleven Owners for*
13 *Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1164 (2000). The Parties have agreed
14 upon procedures by which the Class Members will be provided with written notice of the Settlement
15 similar to that approved and utilized in hundreds of class action settlements and the Class Notice
16 includes all relevant information. (See Exhibit “A” to the Agreement.) Decl. Nordrehaug at ¶32. The
17 Class Notice will explain that the Class Members shall have sixty (60) days from the date that the Class
18 Notice is mailed to them (the “Response Deadline”) to request exclusion (opt-out) or to submit a written
19 objection. (Agreement at ¶¶ 1.46, 8.5, 8.7.) Class Members shall be given the opportunity to object
20 to the Settlement and/or the attorneys’ fees and expenses, and to appear at the Final Approval Hearing.
21 (Agreement at ¶ 8.7.) This notice program was designed to meaningfully reach the Class Members and
22 it advises them of all pertinent information concerning the Settlement. Decl. Nordrehaug at ¶32. The
23 distribution of the Class Notice satisfies the requirements of due process, is the best notice practicable
24 under the circumstances, and complies with Rules of Court 3.766 and 3.769(f).

25 **VII. CONCLUSION**

26 Plaintiffs respectfully request that the Court preliminarily approve the proposed settlement and
27 sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the final
28 approval hearing for the proposed date of December 3, 2024.

Dated: June 26, 2024

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

By: /s/ Kyle Nordrehaug
Kyle R. Nordrehaug, Esq., Attorney for Plaintiffs