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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

JENNIFER MONTOYA and JUAN
GONTEZ, individually, on behalf of
themselves and on behalf of all persons
similarly situated,

Plaintiff,

vs.

FPR II, L.L.C., dba LEADPOINT
BUSINESS SERVICES, a Limited Liability
Company; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 22CV404499

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

Hearing Date: November 20, 2024

Hearing Time: 1:30 p.m.

Judge: Hon. Theodore C. Zayner
Dept.: 19

Action Filed: October 13, 2022

Trial Date: Not set

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1 **I. INTRODUCTION**

2 Plaintiffs Jennifer Montoya and Juan Manso Gontez (“Plaintiffs”) will move for an order: (1)
3 preliminarily approving the proposed settlement of this class action with Defendant FPR II, LLC, dba
4 Leadpoint Business Services (“Defendant”); (2) for settlement purposes only, conditionally certifying
5 the Class, which is comprised of “all persons currently or formerly employed by Leadpoint as
6 nonexempt, hourly-paid employees during the period from October 13, 2018, through January 25, 2024
7 (“Class Period”) in the State of California”; (3) provisionally appointing Plaintiffs as the representatives
8 of the Class; (4) provisionally appointing Blumenthal Nordrehaug Bhowmik De Blouw LLP and
9 Bibiyan Law Group, P.C. as Class Counsel for the Class; (5) approving the form and method for
10 providing notice to the Class of the proposed settlement; (6) directing that notice of the proposed
11 settlement be given to the Class; (7) appointing ILYM Group as the Settlement Administrator; and
12 (8) scheduling a final approval hearing date for April 2, 2025 to consider the Plaintiffs’ motion for final
13 approval of the settlement and for approval of attorneys’ fees, expenses and the service awards.
14 Plaintiffs and Defendant have reached a full and final settlement of the above-captioned action, which
15 is set forth in the Joint Stipulation Re: Class Action and Representative Action Settlement
16 (“Settlement,” “Agreement” or “Settlement Agreement”) filed concurrently with the Court.¹ A copy
17 of the fully executed Agreement is attached as Exhibit #1 to the Declaration of Kyle Nordrehaug (“Decl.
18 Nordrehaug”), served and filed herewith.

19 As consideration for this Settlement, the Gross Settlement Amount is One Million Five Hundred
20 Thousand Dollars (\$1,500,000.00) to be paid by Defendant, as set forth in the Agreement. The Gross
21 Settlement Amount will settle all issues pending in the Action between the Parties and will be made in
22 full and final settlement of the released claims. The Gross Settlement Amount includes all payments
23 of Individual Settlement Payments to the Participating Class Members, the Settlement Administration
24 Costs to the Settlement Administrator, the Class Counsel Fees Payment and Class Counsel Litigation
25 Expenses Payment to Class Counsel, the Service Awards to Plaintiffs, and the PAGA penalties payment
26 to the California Labor and Workforce Development Agency (the “LWDA”) and the Aggrieved
27

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

1 Employees. The Gross Settlement Amount does not include the employer's share of payroll taxes
2 which will be separately paid by Defendant. The Settlement is all-in with no reversion to Defendant
3 and no need for Class Members to submit claim forms. Decl. Nordrehaug at ¶3.

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

6 **\$1,500,000** (Gross Settlement Amount)

- 7 - \$25,000 (Plaintiffs' proposed service awards not to exceed \$12,500 each)
- 8 - \$50,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- 9 - \$500,000 (Class Counsel Fees Payment - not to exceed one-third of settlement)
- \$75,000 (PAGA Penalties - 75% to LWDA / 25% to Aggrieved Employees)
- \$15,000 (Settlement Administration Costs - not to exceed amount)

9 **\$835,000** (Net Settlement Amount)

10 At mediation, it was represented that there were approximately 1,485 Class Members who collectively
11 worked approximately 58,000 Workweeks. Based on those numbers, the Gross Settlement Amount
12 provides a value of \$1,010 per Class Member and \$25.86 per Workweek and, after deductions, the Net
13 Settlement Amount provides an average recovery of \$562.28 per Class Member and \$14.39 per
14 Workweek. Decl. Nordrehaug at ¶6.

15 On January 25, 2024, the Parties participated in an all-day mediation session presided over by
16 Mark Rudy, Esq., a respected and experienced mediator of wage and hour class actions. Following this
17 mediation, the Parties reached an agreement to settle the Action. Decl. Nordrehaug at ¶5. The
18 Settlement is fair, reasonable and adequate, and should be preliminarily approved because there is a
19 substantial monetary payment, and there are substantial litigation and class-certification risks.
20 Therefore, Plaintiffs respectfully request that this Court grant preliminary approval of the Agreement
21 and enter the proposed order submitted herewith.

22 **II. DESCRIPTION OF THE SETTLEMENT**

23 The Gross Settlement Amount is One Million Five Hundred Thousand Dollars (\$1,500,000).
24 (Agreement at ¶ 1(M).) Under the Settlement, the Gross Settlement Amount consists of the following
25 elements: (i) all Individual Settlement Payments and Individual PAGA Payments; (ii) the LWDA
26 Payment; (iii) the Court-approved amounts for attorneys' fees and reimbursement of litigation costs and
27 expenses to Class Counsel; (iv) the Service Awards; and (v) the Settlement Administration Costs.
28 (Agreement at ¶ 1(M).) The Gross Settlement Amount does not include Defendant's share of payroll

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

3 Within fourteen (14) days of the Effective Date, Defendant shall deposit the Gross Settlement
4 Amount with the Settlement Administrator. (Agreement at ¶ 11(B).) The distribution of Individual
5 Settlement Payments to Participating Class Members along with the other Court-approved distributions
6 shall be made by the Settlement Administrator within seven (7) days after Defendant fully funds the
7 Gross Settlement Amount. (Agreement at ¶ 11(C).) Decl. Nordrehaug at ¶16.

8 The amount remaining in the Gross Settlement Amount after the deduction of Court-approved
9 amounts for Individual PAGA Payments, the LWDA Payment, the Service Awards, the Class Counsel
10 Fees Payment, the Class Counsel Litigation Expenses Payment, and the Settlement Administration
11 Costs (the “Net Settlement Amount”) shall be allocated to Participating Class Members as their
12 Individual Settlement Payments. (Agreement at ¶¶ 1(R) and 10.) From the Net Settlement Amount,
13 the Settlement Administrator will determine the aggregate number of Workweeks worked by all
14 Participating Class Members during the Class Period (“Participating Class Workweeks”) and use the
15 following formula: Individual Settlement Share = (Participating Class Member's Workweeks worked
16 ÷ Participating Class Workweeks) × Net Settlement Amount. (Agreement at ¶ 10(B).) Workweeks will
17 be calculated based on Defendant’s records; however, Class Members will have the right to challenge
18 their number of Workweeks. Decl. Nordrehaug at ¶17.

19 Class Members may choose to opt-out of the Settlement by following the directions in the Class
20 Notice. (Agreement at ¶ 9(C), Ex. A.) All Class Members who do not "opt out" will be deemed
21 Participating Class Members and will be bound by the Settlement and will be entitled to receive an
22 Individual Settlement Payment. (Agreement at ¶ 9(C).) All Aggrieved Employees, including any who
23 submit an opt-out request, still will receive an Individual PAGA Payment and will release the Released
24 PAGA Claims regardless of their request for exclusion. (Agreement at ¶¶ 7(B) and 9(C)) Finally, the
25 Class Notice will advise the Class Members of their right to object to the Settlement and/or dispute their
26 Workweeks. (Agreement at ¶¶ 9(B) and 9(D), Ex. A.) Decl. Nordrehaug at ¶18.

27 A Participating Class Member must cash the check for his or her Individual Settlement Payment
28 (and, if applicable, Individual PAGA Payment) within 180 days after it is mailed. (Agreement at ¶ 5.2.)

1 Any settlement checks not cashed within 180 days will be voided and any funds represented by such
2 checks sent to Child Advocates of Silicon Valley, the cy pres recipient, pursuant to California Code of
3 Civil Procedure Section 384, subd. (b). (Agreement at ¶ 11(A).) Decl. Nordrehaug at ¶19.

4 Subject to Court approval, the Parties have agreed on ILYM Group to administer the settlement
5 in this action (the “Settlement Administrator”). (Agreement at ¶ 8(A).) The Settlement Administrator
6 will be paid for settlement administration in an amount not to exceed \$15,000. (Agreement at ¶ 8(A).)
7 Decl. Nordrehaug at ¶20. A Declaration from ILYM Group is submitted herewith.

8 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
9 to exceed one-third of the Gross Settlement Amount for their attorneys’ fees. (Agreement at ¶ 12.)
10 Class Counsel will also be allowed to apply for an award of litigation expenses in an amount not to
11 exceed \$50,000. (Agreement at ¶ 12.) Subject to Court approval, the Agreement provides for a
12 payment of no more than \$12,500 each to Plaintiffs as the Service Awards. (Agreement at ¶ 13.) Decl.
13 Nordrehaug at ¶21.

14 Subject to Court approval, \$75,000 will be paid from the Gross Settlement Amount in settlement
15 of Plaintiffs’ claim for civil penalties under the California Labor Code Private Attorneys General Act
16 (“PAGA”), Cal. Labor Code Section 2698, *et seq.* Pursuant to the express requirements of Labor Code
17 § 2699(i), seventy-five percent (75%) of the amount allocated toward PAGA penalties (\$56,250.00) will
18 be paid to the LWDA and twenty-five percent (25%) or \$18,750.00 will be distributed to Aggrieved
19 Employees on a *pro rata* basis based upon their respective Pay Periods worked as Aggrieved Employees
20 during the PAGA Period. (Agreement at ¶ 15) As set forth in the accompanying proof of service, the
21 LWDA has been served with this motion and the Agreement. Decl. Nordrehaug at ¶22.

22 **III. CASE BACKGROUND**

23 The description of the case and claims, along with the procedural history, is set forth in the
24 Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and an
25 informal exchange of documents, information, and data in connection with the Action which permitted
26 Class Counsel to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and 14. The
27 Parties participated in private mediation on January 25, 2024 with Mark Rudy, Esq., which after arm’s
28 length negotiations, resulted in this Settlement. Decl. Nordrehaug, ¶12.

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

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

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

17 The primary question presented on an application for preliminary approval of a proposed class
18 action settlement is whether the proposed settlement is "within the range of possible approval." *Manual*
19 *for Complex Litigation, Second* §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir.
20 1982).² Preliminary approval is merely the prerequisite to giving notice so that "the proposed
21 settlement... may be submitted to members of the prospective Class for their acceptance or rejection."
22 *Sayaman v. Baxter Healthcare Corp.*, 2010 U.S. Dist. LEXIS 151997, *3 (C.D. Cal. 2010). There is
23 "a presumption of fairness . . . where . . . [a] settlement is reached through arms-length bargaining."
24 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 245 (2001) (citation omitted); *see also Cho v.*

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 *Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th 734, 742-45 (2009) (upholding trial court's
2 determination that settlement was "fair, reasonable and adequate" where the settlement "provided
3 valuable benefits to the class ... that were 'particularly valuable in light of the risks plaintiff would have
4 faced if she proceeded to litigate her case.'"); *Newberg*, 3d Ed., §11.41, p.11-88. However, the ultimate
5 question of whether the proposed settlement is fair, reasonable and adequate is made after notice of the
6 settlement is given to the class members and a final settlement hearing is held by the Court.

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

8 The approval of a proposed settlement of a class action suit is a matter within the broad
9 discretion of the trial court. *Wershba, supra*, 91 Cal.App.4th at 234-235; *Dunk*, 48 Cal.App.4th at
10 1794. Preliminary approval does not require the trial court to answer the ultimate question of whether
11 a proposed settlement is fair, reasonable and adequate. That final determination is made only after
12 notice of the settlement has been given to the class members and after they have been given an
13 opportunity to voice their views of the settlement or to be excluded from the settlement. 3B J. Moore,
14 *Moore's Federal Practice* §§23.80 - 23.85 (2003).

15 In considering a potential settlement for preliminary approval purposes, the trial court need not
16 reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute,
17 and need not engage in a trial on the merits. *Wershba, supra*, 91 Cal.App.4th at 239-40; *Dunk, supra*,
18 48 Cal.App. 4th at 1807. The Ninth Circuit explains, "the very essence of a settlement is compromise,
19 'a yielding of absolutes and an abandoning of highest hopes.'" *Officers for Justice*, 688 F.2d at 624.
20 The question whether a proposed settlement is fair, reasonable and adequate necessarily requires a
21 judgment and evaluation by the attorneys for the parties based upon a comparison of "the terms of the
22 compromise with the likely rewards of litigation." *Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir.
23 1982), *cert. denied* 464 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders of TMT*
24 *Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)). Thus, when analyzing the settlement,
25 the amount is "not to be judged against a hypothetical or speculative measure of what might have been
26 achieved by the negotiators." *Officers for Justice*, 688 F.2d at 625, 628.

27 With regard to class action settlements, the opinions of counsel should be given considerable
28 weight in light of their familiarity with the litigation and previous experience with similar cases.

1 *Officers for Justice*, 688 F.2d at 625; *In re Wash. Public Power Supply System Sec. Litig.*, 720 F. Supp.
2 1379, 1392 (D. Ariz. 1989); *Kirkorian v. Borelli*, 695 F. Supp. 446, 451 (N.D. Cal. 1988); *Weinberger*,
3 698 F.2d at 74. “The recommendations of plaintiffs’ counsel should be given a presumption of
4 reasonableness.” *Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 622 (N.D. Cal. 1979). As a result, courts
5 hold that the recommendation of counsel is entitled to significant weight. *Nat’l Rural Telecomms.*
6 *Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004).

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

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

19 **1. The Settlement Is The Product Of Serious, Informed And**
20 **Arm’s Length Negotiations By Experienced Counsel.**

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

26 ³ The release applicable to the Class is tethered to allegations in the Action as the “Released Class
27 Claims” are “all class claims that occurred during the Class Period that were alleged, or reasonably
28 could have been alleged based upon the facts alleged in the Operative Complaint”. (Agreement at ¶
7(A).)

1 Class Counsel are experienced and qualified to evaluate the class claims, the defenses asserted,
2 and the risks and benefits of trial and settlement, and Class Counsel are particularly experienced in wage
3 and hour employment class actions, as Class Counsel has previously litigated and certified similar
4 claims against other employers. Decl. Nordrehaug at ¶31; Declaration of David D. Bibiyan at ¶10. The
5 view of qualified and well-informed counsel that a class action settlement is fair, adequate, and
6 reasonable is entitled to significant weight. *See Kullar v. Foot Locker*, 168 Cal. App. 4th 116, 133
7 (2008) (the trial court "undoubtedly should continue to place reliance on the competence and integrity
8 of counsel, the involvement of a qualified mediator, and the paucity of objectors to the settlement.");
9 *Dunk*, 48 Cal. App. 4th at 1802.

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

20 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant is
21 One Million Five Hundred Thousand Dollars (\$1,500,000). The Settlement is all-in with no reversion
22 to Defendant and no need for Class Members to submit claim forms. Decl. Nordrehaug at ¶3.

23 Class Counsel has conducted a thorough investigation into the facts of the class action. Over
24 the course of more than two years, Class Counsel diligently evaluated the Class Members' claims
25 against Defendant. Prior to the settlement negotiations, counsel for Defendant provided Class Counsel
26 with access to necessary documents and information for the Class, including, but not limited to payroll
27 and timekeeping data for the Class. In addition, Class Counsel has previously negotiated settlements
28 with other employers in actions involving nearly identical issues and analogous defenses. Based on the

1 informal discovery and their own independent investigation, evaluation and experience, Class Counsel
2 believes that the settlement with Defendant on the terms set forth in the Agreement is fair, reasonable,
3 and adequate and is in the best interest of the Class in light of all known facts and circumstances,
4 including the risk of significant delay, the risk that the claims would not be allowed to proceed on a
5 class or representative basis, the defenses asserted by Defendant, and potential appellate issues. Decl.
6 Nordrehaug at ¶ 14.

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

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

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

21 The proposed Settlement has no "obvious deficiencies" and is well within the range of possible
22 approval. All Class Members will receive an opportunity to participate in the Settlement and receive
23 payment according to the same formula. (Agreement at ¶ 10.) Based upon the approximately 1,485
24 Class Members represented at mediation who collectively worked approximately 58,000 Workweeks,
25 the Gross Settlement Amount, based on those figures, provides a value of \$1,010 per Class Member and
26 \$25.86 per Workweek and, after deductions, the Net Settlement Amount provides an average recovery
27 of \$562.28 per Class Member and \$14.39 per Workweek. Decl. Nordrehaug, ¶6.

28 The calculations to compensate for the amount due to the Class Members at the time the

1 Settlement was negotiated were calculated by Plaintiffs' expert, Berger Consulting, in advance of
2 mediation. Class Counsel analyzed the data for putative class members and determined the potential
3 maximum damages for the class claims. For the Class, the maximum value of the claim for unpaid
4 wages due to alleged rounding practices was \$145,718, the maximum value of the claim for unpaid
5 wages due to the alleged miscalculation of the regular rate applicable to overtime pay and sick pay was
6 \$7,790, the maximum value of the claim for unpaid wages due to alleged off-the-clock work was
7 \$1,487,756, the maximum potential damages for alleged meal period violations were estimated to be
8 \$4,519,427 based upon a potential 93.1% violation rate observed in the time records and after deduction
9 of meal premiums already paid by Defendant, the maximum potential damages for alleged rest period
10 violations were estimated to be \$4,478,470 based upon the same 93.1% potential violation rate observed
11 for meal periods, and the maximum potential damages for the alleged failure to reimburse business
12 expenses were calculated to be \$78,955 based upon \$5 per month. In total, the damages for the Class
13 were calculated to have a maximum potential total value of \$10,718,115. In addition, Plaintiff
14 calculated that the maximum value of the potential waiting time penalties were between \$534,810 and
15 \$5,549,831, depending on the predicate violations, and the maximum value of the potential wage
16 statement penalties were \$2,959,800.⁴ Decl. Nordrehaug, ¶6.

17 Consequently, the Gross Settlement Amount represents more than 29% of Plaintiffs' calculation
18 of the potential maximum damages at issue for the Class in this case, assuming these amounts could
19 all be proven in full at trial.⁵ Importantly, the recent decision that good faith belief of compliance by
20 the employer in *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065 (2024), could completely
21

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

27 ⁵ Because the PAGA claim does not provide a recovery to the Class, Plaintiffs did not include the
28 PAGA claim in this discussion of the class claim valuation. The PAGA claim is addressed in the Decl.
Nordrehaug at ¶ 33.

1 negate the claims for waiting time and wage statement penalties, even if wages were owed to the class.
2 The maximum calculations should then be realistically risk rated in consideration for both the risk of
3 class certification and the risk of establishing class-wide liability on all claims. Given the amount of the
4 Settlement as compared to the potential value of the claims, the Settlement is most certainly fair and
5 reasonable.⁶ Clearly, the goal of this litigation has been met. Decl. Nordrehaug, ¶6.

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

23 _____
24 ⁶ See *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)
25 approving settlement which represented "roughly one-sixth of the potential recovery"); *Stovall-Gusman*
26 *v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval
27 where "the proposed Total Settlement Amount represents approximately 10% of what class might have
28 been awarded had they succeeded at trial."); *Viceral v. Mistras Grp., Inc.*, 2016 WL 5907869 (N.D. Cal.
2016) (approving wage and hour class action settlement amounting to 8.1% of full verdict value); *Ma*
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 then it has not knowingly and intentionally failed to comply with the wage statement law.”) If
2 successful, Defendant’s defenses could eliminate or substantially reduce any recovery to the Class.
3 While Plaintiffs believe that these defenses could be overcome, Defendant maintains these defenses
4 have merit and therefore present a serious risk to recovery by the Class. Decl. Nordrehaug, ¶ 24.

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

18 After arm’s-length negotiations between experienced and informed counsel, the Parties
19 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of
20 \$1,500,000.00. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

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

25 2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
26 (9th Cir. 2000)).

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

28 The relief provided in the Settlement will benefit all members of the Class. The Settlement does

1 not grant preferential treatment to Plaintiffs or segments of the Class in any way. Payments to the Class
2 Members are all determined under a neutral methodology. Each Participating Class Member will
3 receive the same opportunity to participate in and receive payment through a neutral formula that is
4 based upon the Workweeks worked by that individual. Decl. Nordrehaug, ¶4.

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

22 **4. The Stage Of The Proceedings Are Sufficiently Advanced To Permit**
23 **Preliminary Approval Of The Settlement.**

24 The stage of the proceedings at which the Settlement was reached also militates in favor of
25 preliminary approval and, ultimately, final approval of the Settlement. Class Counsel has conducted
26 a thorough investigation into the facts of the class action. Class Counsel began investigating the Class
27 Members' claims before the Action was filed. Class Counsel engaged in an investigation of the claims
28 and conducted a review and analysis of the relevant documents and data. Class Counsel was also

1 experienced with the claims at issue here, as Class Counsel previously litigated and settled similar
2 claims in other actions. Accordingly, the agreement to settle did not occur until Class Counsel
3 possessed sufficient information to make an informed judgment regarding the likelihood of success on
4 the merits and the results that could be obtained through further litigation. Decl. Nordrehaug at ¶28.

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

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

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

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

25 All persons currently or formerly employed by Leadpoint as nonexempt, hourly-paid
26 employees during the Class Period in the State of California.

27 (Agreement at ¶ 1(D).)

28 The “Class Period” is from October 13, 2018, through January 25, 2024. (Agreement at ¶ 1(E).)

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

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

4 Code of Civil Procedure Section 382 authorizes class actions “when the question is one
5 of a common or general interest, of many persons, or when the parties are numerous, and
6 it is impracticable to bring them all before the court....” The party seeking certification
7 has the burden to establish the existence of both an ascertainable class and a well-
8 defined community of interest among class members. (*citations omitted*). The
9 “community of interest” requirement embodies three factors: (1) predominant common
10 questions of law or fact; (2) class representatives with claims or defenses typical of the
11 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 Plaintiffs contend that the proposed Class satisfies the criteria for certification under Code of
14 Civil Procedure section 382. Defendant disputes that Plaintiffs can satisfy any of these requirements
15 for 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 ¶ 4.)

18 **1. Ascertainability And Numerosity.**

19 Plaintiffs bring this Action on behalf of a Class of non-exempt employees who worked for
20 Defendant during the applicable Class Period. Plaintiffs assert 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 1,485 members, Plaintiffs maintain 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, Plaintiffs assert that the 1,485 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.**

 Predominance of common issues of law or fact does not require that the common issues be
dispositive of the entire controversy or even that they be dispositive of all liability issues. 1 *Newberg*
2 *on Class Actions*, Section 4.25 at 4-82, 4-83 (1992). “Predominance is a comparative concept, and ‘the

1 necessity for class members to individually establish eligibility and damages does not mean individual
2 fact questions predominate.” *Sav-On*, 34 Cal. 4th at 334.

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

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

15 **3. Typicality.**

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

22 In the Action, Plaintiffs contend that there can be little doubt that the typicality requirement is
23 satisfied. Plaintiffs worked for Defendant in California as non-exempt, hourly employees during the
24 Class Period. Plaintiffs contend that, like every other member of the Class, they was subjected to the
25 same practices and policies of Defendant and is subject to the same defenses. Thus, Plaintiffs assert that
26 the claims of Plaintiffs and the Class Members arise from the same course of conduct by the Defendant,
27 involve the same employment policies and practices of Defendant, and are based on the same legal
28 theories. Decl. Nordrehaug at ¶30. For purposes of settlement, Plaintiffs maintain that the typicality

1 requirement is met as to the common issues presented in this case.

2 **4. Adequacy.**

3 Plaintiffs contend that the Class Members are adequately represented here because Plaintiffs and
4 Class Counsel (a) do not have any conflicts of interest with other Class members, and (b) will prosecute
5 the case vigorously on behalf of the Class. *Hanlon*, 150 F.3d at 1020. First, Plaintiffs are well aware
6 of their duties as the representatives of the Class and have actively participated in the prosecution of this
7 case to date. Plaintiffs effectively communicated with counsel, provided documents to counsel, and
8 participated in the investigation and negotiations in the Action. Second, Plaintiffs retained competent
9 counsel who are experienced in employment class actions and who have no conflicts. Decl. Nordrehaug
10 at ¶ 31; Declaration of David D. Bibiyan at ¶20. Third, there is no antagonism between the interests
11 of the Plaintiffs and those of the Class. Both Plaintiffs and the Class Members seek monetary relief
12 under the same set of facts and legal theories.

13 **5. Superiority.**

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

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

25 *Sav-On*, 34 Cal. 4th at 340.

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

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

The Court has broad discretion in approving a practical notice program. *7- Eleven Owners for
Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1164 (2000). The Parties have agreed

1 upon procedures by which the Class Members will be provided with written notice of the Settlement
2 similar to those approved and utilized in hundreds of class action settlements. In accordance with the
3 Agreement, Defendant will provide to the Settlement Administrator a confidential electronic
4 spreadsheet containing the Class List. (Agreement at ¶ 9(A)(1).) Within seven (7) calendar days or
5 soon thereafter of receiving the Class List from Defendant, the Settlement Administrator will mail the
6 Class Notice to all Class Members via first-class U.S. Mail using the most current mailing address
7 information available. (Agreement at ¶ 8.4(b).) The Class Notice will include a Spanish translation.
8 (Agreement at ¶ 9(A)(1).)

9 The Class Notice, drafted jointly and agreed upon by the Parties through their respective counsel
10 and to be approved by the Court, includes all relevant information. (See Exhibit “A” to the Agreement.)
11 The Class Notice will include, among other information: (i) information regarding the Action; (ii) the
12 impact on the rights of the Class Members if they do not opt out, including a description of the
13 applicable release; (iii) information to the Class Members regarding how to opt out and how to object
14 to the Settlement; (iv) the estimated Individual Settlement Payment (and, if applicable, Individual
15 PAGA Payment) for each of the Class Members and how to dispute the information used to calculate
16 the payment; (iii) the amount of attorneys’ fees and expenses to be sought; (v) the amount of the
17 Plaintiffs’ service award request; and (vi) the anticipated expenses of the Settlement Administrator.
18 (Agreement at ¶9(A)(2) and Exhibit A.) 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. (Agreement at ¶¶ 1(Y), 9(C).) Class Members shall be given the opportunity to
22 object to the Settlement and/or requests for attorneys’ fees and expenses and to appear at the Final
23 Approval Hearing. (Agreement at ¶ 9(B).) Class Members who do not submit a timely and proper
24 request to opt out will automatically receive a payment of their Individual Settlement Payment (and, if
25 applicable, their Individual PAGA Payment). This notice program was designed to meaningfully reach
26 the Class Members and it advises them of all pertinent information concerning the Settlement. Decl.
27 Nordrehaug at ¶32. The mailing and distribution of the Class Notice satisfies the requirements of due
28 process, is the best notice practicable under the circumstances, and complies with Rules of Court 3.766

1 and 3.769(f).

2
3 **VII. CONCLUSION**

4 Based on the foregoing, Plaintiff respectfully requests that the Court preliminarily approve the
5 proposed settlement and sign the proposed Preliminary Approval Order, which is submitted herewith,
6 and schedule the final approval hearing for April 2, 2025.

7
8 Dated: October 24, 2024

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