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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES**

ABEL YOUNG, an individual, on behalf of
himself and on behalf of all persons
similarly situated,

Plaintiff,

vs.

TABC, INC., a Corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No. 22STCV25696

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

Hearing Date: July 27, 2023
Hearing Time: 10:00 a.m.

Judge: Hon. Lawrence P. Riff
Dept: SS-7

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TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	DESCRIPTION OF THE SETTLEMENT.....	2
III.	CASE BACKGROUND.....	5
IV.	THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO GRANT PRELIMINARY APPROVAL	5
A.	The Role Of The Court In Preliminary Approval Of A Class Action Settlement	6
B.	Factors To Be Considered In Granting Preliminary Approval.....	7
1.	The Settlement is the Product of Serious, Informed and Arm's Length Negotiations by Experienced Counsel.....	8
2.	The Settlement Has No "Obvious Deficiencies" and Falls Within the Range for Approval.....	10
3.	The Settlement Does Not Improperly Grant Preferential Treatment To Class Representatives or Segments Of The Class	13
4.	The Stage Of The Proceedings Are Sufficiently Advanced To Permit Preliminary Approval Of The Settlement	14
V.	THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES	15
A.	California Code of Civil Procedure § 382	15
1.	Ascertainability And Numerosity.....	16
2.	Predominance of Common Issues Of Law and Fact.....	16
3.	Typicality	17
4.	Adequacy	17
5.	Superiority	18
VI.	THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE	18
VII.	CONCLUSION.....	19

TABLE OF AUTHORITIES

<u>Cases:</u>	<u>Page:</u>
<i>Brinker v. Superior Court</i> , 53 Cal. 4th 1004 (2012)	12
<i>Boggs v. Divested Atomic Corp.</i> , 141 F.R.D. 58 (S.D. Ohio 1991)	18
<i>Bowles v. Superior Court</i> , 44 Cal.2d 574 (1955)	16
<i>Boyd v. Bechtel Corp.</i> , 485 F.Supp. 610 (N.D. Cal. 1979)	7
<i>Cacho v. Eurostar, Inc.</i> , 43 Cal. App. 5th 885 (2019)	12
<i>Cellphone Termination Fee Cases</i> , 180 Cal.App.4th 1110 (2009)	5
<i>Cho v. Seagate Tech. Holdings, Inc.</i> , 177 Cal. App. 4th 734 (2009)	6
<i>Dunk v. Ford Motor Co.</i> , 48 Cal.App.4th 1794 (1996)	5, 6, 9
<i>Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)</i> , 213 F.3d 454 (9 th Cir. 2000)	11, 13, 15
<i>Duran v. U.S. Bank National Assn.</i> , 59 Cal. 4th 1 (2014)	13
<i>Frazier v. City of Richmond</i> , 184 Cal.App.3d 1491 (1986)	5
<i>Gautreaux v. Pierce</i> , 690 F.2d 616 (7 th Cir. 1982)	5
<i>Ghazaryan v. Diva Limousine, Ltd.</i> , 169 Cal. App. 4th 1524 (2008)	16
<i>Glass v. UBS Fin. Servs.</i> , 2007 U.S. Dist. LEXIS 8476 (N.D.Cal. 2007)	12, 14, 15
<i>Green v. Obledo</i> , 29 Cal.3d 126 (1981)	5
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9 th Cir. 1998)	11, 17
<i>Holman v. Experian Info. Solutions, Inc.</i> , 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014)	14

1	<i>In re Tableware Antitrust Litig.</i> ,	
2	484 F.Supp. 2d 1078 (N.D. Cal. 2007)	7
3	<i>In re Wash. Public Power Supply System Sec. Litig.</i> ,	
4	720 F. Supp. 1379 (D. Ariz. 1989)	7, 10
5	<i>Kirkorian v. Borelli</i> ,	
6	695 F. Supp. 446 (N.D. Cal. 1988)	7
7	<i>Kullar v. Foot Locker</i> ,	
8	168 Cal. App. 4th 116 (2008)	8
9	<i>Linder v. Thrifty Oil Co.</i> ,	
10	23 Cal. 4th 429 (2003)	16
11	<i>Lockheed Martin Corp. v. Superior Ct.</i> ,	
12	29 Cal. 4th 1096, 1108 (2003)	12
13	<i>Louie v. Kaiser Foundation Health Plan, Inc.</i> ,	
14	2008 WL 4473183 (S.D.Cal. 2008)	14
15	<i>Ma v. Covidien Holding, Inc.</i> ,	
16	2014 WL 2472316, (C.D. Cal. 2014)	11
17	<i>Mathein v. Pier 1 Imps. (U.S.), Inc.</i> ,	
18	2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018)	13
19	<i>Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.</i> ,	
20	221 F.R.D. 523 (C.D. Cal. 2004)	7
21	<i>Nordstrom Comm'n Cases</i> ,	
22	186 Cal. App. 4th 576 (2010)	5, 11
23	<i>Officers for Justice v. Civil Service Com'n, etc.</i> ,	
24	688 F.2d. 615 (9th Cir. 1982)	5, 6, 7
25	<i>Rose v. City of Hayward</i> ,	
26	126 Cal.App.3d 926 (1981)	16
27	<i>Salazar v. See's Candy Shops Inc.</i> ,	
28	64 Cal.App.5th 85 (2021)	12
	<i>Sav-On Drug Stores, Inc. v. Superior Court</i> ,	
	34 Cal. 4th 319 (2004)	15, 16, 18
	<i>Sayaman v. Baxter Healthcare Corp.</i> ,	
	2010 U.S. Dist. LEXIS 151997 (C.D. Cal. 2010)	6
	<i>Stovall-Gusman v. W.W. Granger, Inc.</i> ,	
	2015 U.S. Dist. LEXIS 78671 (N.D. Cal. 2015)	11
	<i>Tate v. Weyerhaeuser Co.</i> ,	
	723 F.2d 598 (8th Cir. 1983)	17

1	<i>Valentino v. Carter-Wallace, Inc.</i> ,	
2	97 F.3d 1227 (9th Cir. 1996)	18
3	<i>Vasquez v. Superior Court</i> ,	
4	4 Cal.3d 800 (1971)	6
5	<i>Viceral v. Mistras Grp., Inc.</i> ,	
6	2016 WL 5907869 (N.D. Cal. Oct. 11, 2016).....	11
7	<i>Weinberger v. Kendrick</i> ,	
8	698 F.2d 61 (2d Cir. 1982), <i>cert. denied</i> 464 U.S. 818 (1983).....	7
9	<i>Wershba v. Apple Computer, Inc.</i> ,	
10	91 Cal.App.4th 224 (2001)	6
11	<u>Statutes, Rules and Regulations:</u>	
12	California Code of Civil Procedure §382	15, 16
13	California Labor Code §203	11
14	California Labor Code §226	11
15	California Rules of Court, rule 3.766	19
16	California Rules of Court, rule 3.769	5, 19
17	<u>Secondary Sources:</u>	
18	2 H. Newberg & A. Conte, <i>Newberg on Class Actions</i> (3d ed. 1992)	5, 6, 16
19	<i>Manual For Complex Litigation</i> , (Second), §30.44, 41.43 (1993).....	5
20	3B J. Moore, <i>Moore's Federal Practice</i> §§23.80 - 23.85 (2003)	6
21		
22		
23		
24		
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1 **I. INTRODUCTION**

2 Plaintiff Abel Young (“Plaintiff”) and Defendant TABC Inc. (“TABC”) (collectively, the
3 “Parties”) respectfully submit this memorandum in support of their motion for preliminary approval
4 of the proposed class action settlement in the above-captioned action, and seek entry of an order:
5 (1) preliminarily approving the proposed settlement of this class action; (2) for settlement purposes
6 only, conditionally certifying the Class, which is comprised of “all current and former employees who
7 worked for TABC in a non-exempt position in California at any time from August 9, 2018 through
8 April 7, 2023”; (3) provisionally appointing Plaintiff as the representative of the Class; (4) provisionally
9 appointing Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik, Nicholas J. De Blouw and
10 Christine LeVu of Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel for the Class;
11 (5) approving the form and method for providing notice to the Class of the proposed settlement;
12 (6) directing that notice of the proposed settlement be given to the Class; (7) appointing ILYM Group,
13 Inc. as the Administrator; and (8) scheduling a final approval hearing date, proposed for December 21,
14 2023, to consider the Parties’ joint motion for final approval of the settlement and entry of the
15 Judgment, and Plaintiff’s motion for approval of attorneys’ fees and expenses. Plaintiff and TABC have
16 reached a full and final settlement of the above-captioned action, which is set forth in the Class Action
17 and PAGA Settlement Agreement (the “Agreement” or “Settlement”) filed concurrently with the
18 Court.¹ A copy of the fully executed Agreement is attached as Exhibit #1 to the Declaration of Kyle
19 Nordrehaug (“Decl. Nordrehaug”), served and filed herewith, and the form of the Agreement is based
20 on the Los Angeles Superior Court model form for class and PAGA settlements. A redline comparison
21 between the Agreement and the Court’s model form for a class and PAGA settlement is attached as
22 Exhibit #2 to the Decl. Nordrehaug.

23 As consideration for this Settlement, the Gross Settlement Amount is Five Hundred Thousand
24 Dollars (\$500,000) to be paid by TABC, as set forth in the Agreement. The Gross Settlement Amount
25 will settle all issues pending in the Action between the Parties and will be made in full and final
26 settlement of the released claims. The Gross Settlement Amount includes all payments of Individual

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

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

8 The following is a table of the key financial terms of the Settlement and the proposed
9 deductions:

10 **\$500,000** (Gross Settlement Amount)
11 - \$10,000 (Plaintiff’s proposed service award not to exceed \$10,000)
12 - \$25,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
13 - \$166,666 (Class Counsel Fees Payment - not to exceed one-third of the Gross
14 Settlement Amount)
15 - \$5,000 (PAGA Penalties - 75% to LWDA / 25% to Allegedly Aggrieved Employees)
16 - \$11,500 (Administration Expenses Payment - not to exceed amount)
17 **\$281,834** (Net Settlement Amount)

18 Based upon 311 Class Members who collectively worked 58,321 Workweeks, the Gross Settlement
19 Amount provides a value of \$1,607 per Class Member and \$8.57 per Workweek and after deductions,
20 the Net Settlement Amount provides an average recovery of \$906.21 per Class Member and \$4.83 per
21 Workweek. Decl. Nordrehaug at ¶6.

22 On February 7, 2023, the Parties participated in an all-day mediation session presided over by
23 Louis Marlin, Esq., a respected and experienced mediator of wage and hour class actions. At the
24 mediation, the Parties reached an agreement to settle the Action. Decl. Nordrehaug at ¶5. The
25 Settlement is fair, reasonable and adequate, and should be preliminarily approved because there is a
26 substantial monetary payment, and there are substantial litigation and class-certification risks.
27 Therefore, the Parties respectfully request that this Court grant preliminary approval of the Agreement
28 and enter the proposed order submitted herewith.

29 II. DESCRIPTION OF THE SETTLEMENT

30 The Gross Settlement Amount is Five Hundred Thousand Dollars (\$500,000). (Agreement at
31 ¶ 1.22.) Under the Settlement, the Gross Settlement Amount consists of the following elements: (i) all

1 Individual Class Payments and Individual PAGA Payments; (ii) the LWDA PAGA Payment; (iii) the
2 Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment; (iv) the Class
3 Representative Service Payment; and (v) the Administration Expenses Payment. (Agreement at ¶ 1.22.)
4 The Gross Settlement Amount does not include TABC's share of payroll taxes. (Agreement at ¶ 3.1.)
5 The Gross Settlement Amount shall be all-in with no reversion to TABC. (Agreement at ¶ 3.1.) Decl.
6 Nordrehaug at ¶15.

7 Within twenty-three (23) days of the Settlement's Effective Date, TABC shall deposit the Gross
8 Settlement Amount with the Administrator. (Agreement at ¶ 4.3.) The distribution of Individual Class
9 Payments to Participating Class Members along with the other Court-approved distributions shall be
10 made by the Administrator within ten (10) days after TABC fully funds the Gross Settlement Amount.
11 (Agreement at ¶ 4.4.) Decl. Nordrehaug at ¶16.

12 The amount remaining in the Gross Settlement Amount after the deduction of Court-approved
13 amounts for Individual PAGA Payments, the LWDA PAGA Payment, the Class Representative Service
14 Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the
15 Administration Expenses Payment (the "Net Settlement Amount") shall be allocated to Participating
16 Class Members as their Individual Class Payments. (Agreement at ¶¶ 1.29 and 3.2.) From the Net
17 Settlement Amount, the Individual Class Payment for each Participating Class Member will be
18 calculated by (i) dividing the Net Settlement Amount by the total number of Class Workweeks worked
19 by all Participating Class Members during the Class Period and (ii) multiplying the result by the
20 Participating Class Member's Class Workweeks. (Agreement at ¶ 3.2.4.) Class Workweeks will be
21 calculated based on TABC's records and reported to Class Members in the Class Notice; however,
22 Class Members will have the right to challenge their number of Class Workweeks. Decl. Nordrehaug
23 at ¶17.

24 Class Members may choose to opt out of the Settlement by following the directions in the Class
25 Notice. (Agreement at ¶ 7.5, Ex. A.) All Class Members who do not "opt out" will be deemed
26 Participating Class Members and will be bound by the Settlement and will be entitled to receive an
27 Individual Class Payment. (Agreement at ¶ 7.5(c).) All Allegedly Aggrieved Employees, including
28 any who submit an opt-out request, still will receive an Individual PAGA Payment and will release the

1 Released PAGA Claims regardless of their request for exclusion. (Agreement at ¶¶ 5.3 and 7.5.4.)
2 Finally, the Class Notice will advise the Class Members of their right to object to the Settlement and/or
3 dispute their Workweeks. (Agreement at ¶¶ 7.6 and 7.7, Ex. A.) Decl. Nordrehaug at ¶18.

4 A Participating Class Member must cash the check for his or her Individual Class Payment (and,
5 if applicable, Individual PAGA Payment) within 180 days after it is mailed. (Agreement at ¶ 4.4.1.)
6 Any settlement checks not cashed within 180 days will be voided and any funds represented by such
7 checks sent to the California State Controller's Office, Unclaimed Property Division, in the name of
8 the Class Member, thereby leaving no "unpaid residue" subject to the requirements of California Code
9 of Civil Procedure Section 384, subd. (b). (Agreement at ¶ 4.4.3.) Decl. Nordrehaug at ¶19.

10 Subject to Court approval, the Parties have agreed on ILYM Group to administer the settlement
11 in this action (the "Administrator"). (Agreement at ¶ 1.2.) The Administrator will be paid for
12 settlement administration in an amount not to exceed \$11,500. (Agreement at ¶ 3.2.3.) Decl.
13 Nordrehaug at ¶20.

14 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
15 to exceed one-third of the Gross Settlement Amount as the Class Counsel Fees Payment. (Agreement
16 at ¶ 3.2.2.) Class Counsel will also be allowed to apply separately for an award of Class Counsel
17 Litigation Expenses Payment in an amount not to exceed \$25,000. (Agreement at ¶ 3.2.2.) Subject to
18 Court approval, the Agreement provides for a payment of no more than \$10,000 to Plaintiff as the Class
19 Representative Service Payment. (Agreement at ¶ 3.2.1.) Decl. Nordrehaug at ¶21.

20 Subject to Court approval, Five Thousand Dollars (\$5,000) will be paid from the Gross
21 Settlement Amount in settlement of Plaintiff's claim for civil penalties under the California Labor Code
22 Private Attorneys General Act ("PAGA"), Cal. Labor Code Section 2698, *et seq.* Pursuant to the
23 express requirements of Labor Code § 2699(i), the PAGA Penalties payment shall be allocated as
24 follows: 75% (\$5,750) shall be allocated to the LWDA as its share of the civil penalties and 25%
25 (\$1,250) allocated to the Allegedly Aggrieved Employees and distributed as Individual PAGA
26 Payments based on the number of their respective PAGA Pay Periods. (Agreement at ¶ 3.2.5.) As set
27 forth in the accompanying proof of service, the LWDA has been served with this motion and the
28 Agreement. Decl. 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 and information in connection with the Action which permitted Class
5 Counsel to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and 14. The Parties
6 participated in private mediation on February 7, 2023 with Louis Marlin, Esq., which after arm's length
7 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."
26 *Manual for Complex Litigation, Second* §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th
27
28

1 Cir. 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). No one factor should be determinative, but rather
23 all factors should be considered. The analysis has been summarized as follows:

24 If the proposed settlement appears to be the product of serious, informed, noncollusive
25 negotiations, has no obvious deficiencies, does not improperly grant preferential
26 treatment to class representatives or segments of the class, and falls within the range of
27 possible approval, then the court should direct that notice be given to the class members
28 of a formal fairness hearing, at which evidence may be presented in support of and in
opposition to the settlement.

Manual of Complex Litigation, Second § 30.44, at 229.

1 Here, the Settlement meets all of these criteria for preliminary approval.

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

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

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

16
17 ³ The release applicable to the Class is tethered to allegations in the Action as the "Released Class
18 Claims" are "any and all known and unknown claims against TABC and the other Released Parties that
19 are asserted in the Operative Complaint or arise out of or reasonably relate to the facts alleged in the
20 Operative Complaint that arose during the Class Period for claims that TABC failed to pay all wages
21 due, including minimum wages, overtime wages, and paid sick leave; provide meal and rest periods;
22 pay meal and rest period premiums at the regular rate of pay; record meal periods; reimburse necessary
23 business expenses; furnish accurate itemized wage statements; or pay all wages due to discharged and
24 quitting employees. The released claims include claims brought under California Labor Code sections
25 201-204, 210, 218, 221, 226, 226.3, 226.7, 227.3, 233, 246, 246.5, 510, 512, 558, 1174, 1194, 1194.2,
26 1197, 1197.1, 1198, 2698 et seq., and 2802, California Business and Professions Code sections
27 17200-17208, and the Industrial Welfare Commission Wage Order. Such claims include claims for
28 wages, statutory penalties, civil penalties, or other relief under the California Labor Code, including
PAGA; relief from unfair competition under California Business and Professions Code section 17200
et seq.; attorneys' fees and costs; and interest (the "Released Class Claims"). The Released Class
Claims do not include a release of any other claims, including Plaintiff's individual claims, claims for
vested benefits, wrongful termination, violation of the Fair Employment and Housing Act,
unemployment insurance, disability, Social Security, workers' compensation, or claims based on facts
occurring outside the Class Period." (Agreement at ¶ 5.2.) Likewise, the release of PAGA claims
covers claims under PAGA "that arise out of or reasonably relate to the facts in Plaintiff's PAGA
Notice." (Agreement at 5.3.)

mediator, and the paucity of objectors to the settlement."); *Dunk*, 48 Cal. App. 4th at 1802.

The Parties attended an arm's length mediation session with Louis Marlin, a respected and experienced mediator of wage and hour class actions, in order to reach the Settlement. In preparation for the mediation, TABC provided Class Counsel with necessary information for the members of the Class, including payroll data and data concerning the composition of the Class. Plaintiff analyzed the data with the assistance of a damages expert, Berger Consulting, and prepared and submitted a mediation brief and damage valuation to the Mediator. Following the all-day mediation, the Parties agreed to the Settlement, which was memorialized in the form of a Memorandum of Understanding. The final terms of the Settlement were negotiated and set forth in the Agreement now presented for this Court's approval. Decl. Nordrehaug at ¶ 5. Importantly, Plaintiff and Class Counsel believe that this Settlement is fair, reasonable and adequate.

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

Class Counsel has conducted a thorough investigation into the facts of the class action. Over the course of nearly a year, Class Counsel diligently evaluated the Class Members' claims against TABC. Prior to the settlement negotiations, counsel for TABC provided Class Counsel with access to necessary information for the Class. In addition, Class Counsel has previously negotiated settlements with other employers in actions involving nearly identical issues and analogous defenses. Based on the informal discovery and their own independent investigation, evaluation and experience, Class Counsel believes that the settlement with TABC on the terms set forth in the Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known facts and circumstances, including the risk of significant delay, the risk that the claims would not be allowed to proceed on a class or representative basis, the defenses asserted by TABC, and potential appellate issues. Decl. Nordrehaug at ¶ 14.

Plaintiff and Class Counsel recognize the expense and length of continuing to litigate and trying this Action against TABC and then litigating possible appeals that could take several years. Class Counsel has also taken into account the uncertain outcome and risk of litigation, especially in complex

1 class actions such as this Action. Class Counsel is also mindful of and recognizes the inherent
2 problems of proof under, and alleged defenses to, the claims asserted in the Action. Based upon their
3 evaluation, Plaintiff and Class Counsel have determined that the Settlement set forth in the Agreement
4 is in the best interest of the Class Members. Decl. Nordrehaug, ¶ 23.

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

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

12 The proposed Settlement has no "obvious deficiencies" and is well within the range of possible
13 approval. All Class Members will receive an opportunity to participate in the Settlement and receive
14 payment according to the same formula. (Agreement at ¶ 3.2.4.) Based upon 311 Class Members who
15 collectively worked 58,321 Workweeks (Agreement at ¶ 4.1), the Gross Settlement Amount provides
16 a value of \$1,607 per Class Member and \$8.57 per Workweek and, after deductions, the Net Settlement
17 Amount provides an average recovery of \$906.21 per Class Member and \$4.83 per Workweek. Decl.
18 Nordrehaug, ¶6.

19 The calculations to compensate for the amount due to the Class Members at the time the
20 Settlement was negotiated were calculated by Plaintiff’s expert, Berger Consulting, in advance of
21 mediation. Class Counsel analyzed the data for putative class members and determined the potential
22 maximum damages for the class claims. For the Class, the maximum value of the claim for unpaid
23 wages due to the alleged miscalculation of the regular rate for meal premiums and sick pay was
24 \$63,793, the maximum value of the claim for unpaid wages due to alleged off-the-clock work for
25 COVID health screenings at 5 minutes per shift was \$598,991, the maximum potential damages for
26 alleged rest period violations were estimated to be \$1,188,550 based upon one violation per week, and
27 the maximum potential damages for the alleged failure to reimburse business expenses were calculated
28 to be \$50,040. In total, the damages for the Class were calculated to have a maximum potential total

1 value of \$1,901,374. In addition, Plaintiff calculated that the maximum value of the potential waiting
2 time penalties were \$292,723, and the maximum value of the potential wage statement penalties were
3 \$1,046,600.⁴ Decl. Nordrehaug, ¶6.

4 Consequently, the Gross Settlement Amount represents more than 26% of Plaintiff's calculation
5 of the potential maximum damages at issue for the Class in this case, assuming these amounts could
6 all be proven in full at trial.⁵ The above maximum calculations should then be adjusted in consideration
7 for both the risk of class certification and the risk of establishing class-wide liability on all claims.
8 Given the amount of the Settlement as compared to the potential value of the claims, the Settlement is
9 most certainly fair and reasonable.⁶ Clearly, the goal of this litigation has been met. Decl. Nordrehaug,
10 ¶6.

11 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
12 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by TABC
13 present serious threats to the claims of the Plaintiff and the other Class Members. TABC maintains that
14 its practices complied with all applicable wage and hour laws. TABC maintains that all Class Members'
15 work time was properly recorded and compensated and that there was no miscalculation of the regular
16

17 ⁴ While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
18 226, at mediation Plaintiff recognized that these claims were subject to additional, separate defenses
19 asserted by TABC, including but not limited to, a good-faith dispute defense as to whether any
20 premium wages for meal or rest periods or other wages were owed given TABC's position that Plaintiff
21 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.").

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

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
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. 2016) (approving wage and hour class action settlement amounting to 8.1% of full verdict value);
28 *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 rate. TABC maintains that its meal and rest period policies and practices provide Class Members with
2 meal and rest periods that exceed the requirements of California law. Specifically, TABC contends that
3 meal periods were highly regimented, that employees took 35-minute meal periods, and, if anything,
4 TABC overpaid premiums by automatically paying them for all short/late/missed meal periods reflected
5 in the time records. Moreover, the vast majority of Class Members work pursuant to a collective
6 bargaining agreement that meets the requirements of Labor Code §514, and thus precludes Plaintiff's
7 and those Class Members' claims for alleged unpaid overtime. As to expense reimbursement, TABC
8 maintains that it did not fail to provide reimbursement for necessary business expenses because, among
9 other things, TABC provides its employees with all necessary personal protective equipment, and
10 employees are not required to use their personal cell phones to perform their work. TABC maintains
11 that the decisions in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), *Lockheed Martin Corp. v.*
12 *Superior Ct.*, 29 Cal. 4th 1096, 1108 (2003), and *Salazar v. See's Candy Shops Inc.*, 64 Cal.App.5th 85
13 (2021), seriously weaken Plaintiff's claims in terms of liability and value, and preclude his claims from
14 proceeding on a class or representative basis. TABC also maintains that a good-faith dispute and
15 absence of willfulness would negate the claims for waiting time penalties and failure to provide
16 accurate itemized wage statements. If successful, TABC's defenses could eliminate or substantially
17 reduce any recovery to the Class. While Plaintiff believes that these defenses could be overcome,
18 TABC maintains these defenses have merit and therefore present a serious risk to recovery by the Class.
19 Decl. Nordrehaug, ¶ 24.

20 There was also a significant risk that, if the Action was not settled, Plaintiff would be unable
21 to obtain class certification and thereby not recover on behalf of any employees other than himself.
22 TABC argued that the individual experience of each putative class member varied with respect to the
23 claims, which would preclude the claims from proceeding on a class or representative basis. For
24 instance, Plaintiff's meal and rest period claims would require individualized inquiries into whether
25 each employee took a compliant meal or rest period on a given shift and, if not, why; and Plaintiff's
26 off-the-clock claims would require individualized inquiries into whether each employee ever performed
27 off-the-clock work and, if so, why. Plaintiff is aware of other cases where class certification of similar
28 claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th 885 (2019) (denying certification

1 of rest break claims). Finally, even if class certification was successful, as demonstrated by the
2 California Supreme Court decision in *Duran v. U.S. Bank National Association*, 59 Cal. 4th 1 (2014),
3 there are significant hurdles to overcome for a class-wide recovery even where a class has been
4 certified. While other cases have approved class certification of wage and hour claims, class
5 certification in this Action would have been hotly disputed and was by no means a foregone conclusion.
6 Decl. Nordrehaug, ¶ 25.

7 After arm's-length negotiations between experienced and informed counsel, the Parties
8 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of
9 \$500,000.00. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

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

16 2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
17 (9th Cir. 2000)).

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

20 The relief provided in the Settlement will benefit all members of the Class. The Settlement does
21 not grant preferential treatment to Plaintiff or segments of the Class in any way. Payments to the Class
22 Members are all determined under a neutral methodology. Each Participating Class Member will
23 receive the same opportunity to participate in and receive payment through a neutral formula that is
24 based upon the Class Workweeks (and, if applicable, PAGA Pay Periods) worked by that individual.
25 Decl. Nordrehaug, ¶4.

26 Plaintiff will apply to the Court for Class Representative Service Payment in consideration for
27 his service and for the risks undertaken on behalf of the class. (Agreement at ¶ 3.2.1.) Plaintiff
28 performed his duties admirably by working with Class Counsel. Decl. Nordrehaug at ¶27. The
concurrently filed declaration of Plaintiff is presented herewith in support of the request. For purposes
of this preliminary approval stage, the requested service award of \$10,000 is well within the accepted
range of awards for purposes of preliminary approval. See, e.g., *Mathein v. Pier 1 Imps. (U.S.), Inc.*,

1 2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500 where average class member
2 payment was \$351); *Holman v. Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D.
3 Cal. 2014) (approving \$10,000 service award where class member recovery was \$375); *Louie v. Kaiser*
4 *Foundation Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D.Cal. 2008) (awarding \$25,000 service
5 award to each of six plaintiffs in overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862,
6 *16-17 (N.D.Cal. 2007) (awarding \$25,000 service award in overtime class action and a pool of
7 \$100,000 in enhancements). As explained in *Glass*, service awards are routinely awarded to class
8 representatives to compensate them for the time and effort expended on the case, for the risk of
9 litigation, for the fear of suing an employer and retaliation therefrom, and to serve as an incentive to
10 vindicate the statutory rights of all employees. 2007 WL 221862 at *16-17.

11 **4. The Stage Of The Proceedings Are Sufficiently Advanced To Permit**
12 **Preliminary Approval Of The Settlement.**

13 The stage of the proceedings at which the Settlement was reached also militates in favor of
14 preliminary approval and, ultimately, final approval of the Settlement. Class Counsel has conducted
15 a thorough investigation into the facts of the class action. Class Counsel began investigating the Class
16 Members' claims before the Action was filed. Class Counsel engaged in an investigation of the claims
17 and conducted a review and analysis of the relevant documents and data. Class Counsel was also
18 experienced with the claims at issue here, as Class Counsel previously litigated and settled similar
19 claims in other actions. Accordingly, the agreement to settle did not occur until Class Counsel
20 possessed sufficient information to make an informed judgment regarding the likelihood of success on
21 the merits and the results that could be obtained through further litigation. Decl. Nordrehaug at ¶28.

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

1 In *Glass*, the Northern District of California granted final approval of an overtime wage action
2 although in *Glass* no formal discovery had been conducted prior to the settlement:

3 Here, no formal discovery took place prior to settlement. As the Ninth Circuit has
4 observed, however, '[i]n the context of class action settlements, 'formal discovery is not
5 a necessary ticket to the bargaining table' where the parties have sufficient information
6 to make an informed decision about settlement.'"

7 *Glass*, 2007 U.S. Dist. LEXIS 8476 at *14 (quoting *In re Mego Financial Corp. Securities Litigation*,
8 213 F.3d at 459).

9 Here, Class Counsel was in a better position to evaluate the fairness of this Settlement because
10 Class Counsel received relevant documents and data through informal discovery, evaluated the
11 information with the assistance of an expert, and performed independent investigations and due
12 diligence to confirm the accuracy of the information supplied by TABC.

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

14 Plaintiff contends that the Settlement meets all of the requirements for certification of a
15 settlement class under California Code of Civil Procedure § 382 as demonstrated below, and therefore,
16 the Court may appropriately approve the Class as defined in the Agreement. This Court should
17 conditionally certify the Class, for settlement purposes only, defined as follows:

18 All current and former employees who worked for TABC in a non-exempt position in
19 California at any time at any time during the Class Period.

20 (Agreement at ¶ 1.5.)

21 The "Class Period" is from August 9, 2018 through April 7, 2023. (Agreement at ¶ 1.12.)

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

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

25 Code of Civil Procedure Section 382 authorizes class actions "when the question is one
26 of a common or general interest, of many persons, or when the parties are numerous,
27 and it is impracticable to bring them all before the court...." The party seeking
28 certification 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.

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

1 Plaintiff contends that the proposed Class satisfies the criteria for certification under Code of
2 Civil Procedure section 382. TABC disputes that Plaintiff can satisfy any of these requirements for
3 class certification in the litigation context, but does not oppose certification for purposes of the
4 Settlement. Accordingly, the proposed Class should be certified for purposes of the Settlement only.
5 (Agreement at ¶ 2.9.)

6 **1. Ascertainability And Numerosity.**

7 Plaintiff brings this Action on behalf of a Class of non-exempt employees who worked for
8 TABC during the applicable Class Period. Plaintiff asserts that all of these individuals are ascertainable
9 because the class members can readily be determined through examination of TABC's files. Given that
10 the Class consists of approximately 311 members, Plaintiff maintains that numerosity is clearly
11 satisfied. *See Bowles v. Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members sufficiently
12 numerous); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies
13 numerosity requirement.) Here, Plaintiff asserts that the approximately 311 individuals who comprise
14 the Class can be identified based on TABC's records and are sufficiently numerous for class
15 certification. Decl. Nordrehaug at ¶30.

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

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

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

28 Here, Plaintiff contends that common questions of law and fact are present, and specifically the

1 common questions of whether TABC's practices were lawful, whether Class members were lawfully
2 compensated for all hours worked, whether TABC properly calculated wages, whether TABC failed
3 to provide all legally required rest periods to class members, whether TABC failed to provide required
4 expense reimbursement, and whether Class Members are entitled to damages and penalties as a result
5 of these alleged practices. Decl. Nordrehaug, ¶30.

6 **3. Typicality.**

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

13 In the Action, Plaintiff contends that there can be little doubt that the typicality requirement is
14 satisfied. Plaintiff worked for TABC as a non-exempt employee during the Class Period. Plaintiff
15 contends that, like every other member of the Class, he was subject to the same practices and policies
16 of TABC and was subject to the same defenses. Thus, Plaintiff asserts that the claims of Plaintiff and
17 the Class Members arise from the same course of conduct by TABC, involve the same employment
18 policies and practices of TABC, and are based on the same legal theories. Decl. Nordrehaug at ¶30.
19 For purposes of settlement, Plaintiff maintains that the typicality requirement is met as to the common
20 issues presented in this case.

21 **4. Adequacy.**

22 Plaintiff contends that the Class Members are adequately represented here because Plaintiff and
23 Class Counsel (a) do not have any conflicts of interest with other Class Members, and (b) will prosecute
24 the case vigorously on behalf of the Class. *Hanlon*, 150 F.3d at 1020. First, Plaintiff is well aware of
25 his duties as the representative of the Class and has actively participated in the prosecution of this case
26 to date. Plaintiff effectively communicated with counsel, provided documents to counsel, and
27 participated in the investigation and negotiations in the Action. Second, Plaintiff retained competent
28 counsel who are experienced in employment class actions and who have no conflicts. Decl.

1 Nordrehaug at ¶ 31. Third, there is no antagonism between the interests of the Plaintiff and those of
2 the Class. Both Plaintiff and the Class Members seek monetary relief under the same set of facts and
3 legal theories.

4 **5. Superiority.**

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

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

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

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

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

20 The Court has broad discretion in approving a practical notice program. *7- Eleven Owners for*
21 *Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1164 (2000). The Parties have agreed
22 upon procedures by which the Class Members will be provided with written notice of the Settlement
23 similar to those approved and utilized in hundreds of class action settlements. In accordance with the
24 Agreement, TABC will provide to the Administrator a confidential electronic spreadsheet containing
25 the Class Data. (Agreement at ¶ 4.2.) Within 15 days after receiving the Class Data, the Administrator
26 will mail the Class Notice to all Class Members via first-class U.S. Mail using the most current mailing
27 address information available. (Agreement at ¶ 7.4.2.)

28 The Class Notice, drafted jointly and agreed upon by the Parties through their respective counsel
and to be approved by the Court, includes all relevant information. (See Exhibit “A” to the Agreement.)
The Class Notice will include, among other information: (i) information regarding the Action; (ii) the

1 impact on the rights of the Class Members if they do not opt out, including a description of the
2 applicable release; (iii) information to the Class Members regarding how to opt out and how to object
3 to the Settlement; (iv) the estimated Individual Class Payment (and, if applicable, Individual PAGA
4 Payment) for each of the Class Members and how to dispute the information used to calculate the
5 payment; (iii) the amount of attorneys' fees and expenses to be sought; (v) the amount of the Plaintiff's
6 service award request; and (vi) the anticipated expenses of the Administrator. Decl. Nordrehaug at ¶32.

7 The Class Notice will state that the Class Members shall have forty-five (45) days from the date
8 that the Notice is mailed to them (the "Response Deadline") to request exclusion (opt-out), and that the
9 Response Deadline shall be extended in the event of a re-mailing. (Agreement at ¶ 7.5.1.) Class
10 Members shall be given the opportunity to object to the Settlement and/or requests for attorneys' fees
11 and expenses and to appear at the Final Approval Hearing. (Agreement at ¶ 7.7.) Class Members who
12 do not submit a timely and proper request to opt out will automatically receive a payment of their
13 Individual Class Payment (and, if applicable, their Individual PAGA Payment). This notice program
14 was designed to meaningfully reach the Class Members and it advises them of all pertinent information
15 concerning the Settlement. Decl. Nordrehaug at ¶32. The mailing and distribution of the Class Notice
16 satisfies the requirements of due process, is the best notice practicable under the circumstances, and
17 complies with Rules of Court 3.766 and 3.769(f).

18 VII. CONCLUSION

19 Based on the foregoing, the Parties respectfully request that the Court preliminarily approve the
20 proposed settlement and sign the proposed Preliminary Approval Order, which is submitted herewith,
21 and schedule the final approval hearing for December 21, 2021, or the next date thereafter convenient
22 for the Court.

23 Dated: June 27, 2023

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

24 By: /s/ Kyle Nordrehaug
25 Kyle R. Nordrehaug, Esq.
26 Attorney for Plaintiff

26 Dated: June 27, 2023

PAUL HASTINGS LLP

27 By: /s/ Zachary P. Hutton
28 Zachary P. Hutton, Esq.
Attorney for Defendant TABC Inc.