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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **IN AND FOR THE COUNTY OF MADERA**

15 BRANDY HALE, an individual, on behalf
16 of herself, and on behalf of all persons
17 similarly situated,

18 Plaintiff,

19 vs.

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

23 Defendants.

Case No. **MCV088135**

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

Hearing Date: March 12, 2024

Hearing Time: 8:30 a.m.

Judge: Hon. Brian W. Enos

Dept: 45

Action Filed: December 1, 2022

Trial Date: Not Set

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1 **I. INTRODUCTION**

2 Plaintiff Brandy Hale (“Plaintiff”) respectfully submits this memorandum in support of the
3 unopposed motion for preliminary approval of the proposed class action settlement with Defendant
4 PaleoWest, LLC (“Defendant”), and seeks entry of an order: (1) preliminarily approving the proposed
5 settlement of this class action with Defendant; (2) for settlement purposes only, conditionally certifying
6 the Class, which is comprised of “all individuals who were employed by Defendant in California and
7 classified as a non-exempt employee at any time during the Class Period” of December 1, 2018 to
8 November 23, 2023; (3) provisionally appointing Plaintiff as the representative of the Class; (4)
9 provisionally appointing Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik, Nicholas J.
10 De Blouw, Jeffrey S. Herman, Sergio J. Puche, and Trevor G. Moran of Blumenthal Nordrehaug
11 Bhowmik De Blouw LLP as Class Counsel for the Class; (5) approving the form and method for
12 providing class-wide notice; (6) directing that notice of the proposed settlement be given to the Class;
13 (7) appointing Apex Class Action LLC as the Administrator; and (8) scheduling a final approval hearing
14 date proposed for July 30, 2024 to consider Plaintiff’s motion for final approval of the settlement and
15 for approval of attorneys' fees and expenses. Plaintiff and Defendant (collectively the “Parties”) 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 (“Agreement”) filed concurrently with the Court.¹ A copy of the
18 fully executed Agreement is attached as Exhibit #1 to the Declaration of Kyle Nordrehaug (“Decl.
19 Nordrehaug”), served and filed herewith, and the form of the Agreement is the Los Angeles Superior
20 Court model form for class and PAGA settlements.

21 As consideration for this Settlement, the Gross Settlement Amount is Eight Hundred Thousand
22 Dollars (\$800,000) to be paid by Defendant, as set forth in the Agreement. The Gross Settlement
23 Amount will settle all issues pending in the Action between the Parties and will be made in settlement
24 of the Released Class Claims. The Gross Settlement Amount includes all payments of Individual Class
25 Payments to the Participating Class Members, Administration Expenses Payment, Class Counsel Fees
26 Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, and the

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

1 PAGA Penalties payment. The Settlement is all-in with no reversion to Defendant and no need to
2 submit a claim form. Decl. Nordrehaug at ¶3.

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

5 **\$800,000** (Gross Settlement Amount)

- 6 - \$12,500 (Plaintiff's proposed service award not to exceed \$12,500)
- 7 - \$30,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- 8 - \$266,666 (Class Counsel Fees Payment - not to exceed 1/3 of Gross Settlement)
- 9 - \$20,000 (PAGA Penalties Payment - 75% to LWDA / 25% to Aggrieved Employees)
- 10 - \$8,000 (Administration Expenses Payment - not to exceed amount)

11 **\$462,834** (Net Settlement Amount)

12 Based upon 189 Class Members who collectively worked 8,000 Workweeks (Agreement at ¶ 4.1),
13 which were the estimated class figures at mediation, the Gross Settlement Amount provides a value of
14 \$4,232 per Class Member and \$100 per Workweek and after deductions, the Net Settlement Amount
15 provides an average recovery of \$2,448.85 per Class Member and a recovery of \$57.85 per Workweek.
16 Decl. Nordrehaug at ¶6.

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

24 **II. DESCRIPTION OF THE SETTLEMENT**

25 The Gross Settlement Amount is Eight Hundred Thousand Dollars (\$800,000). (Agreement at
26 ¶ 1.23.) Under the Settlement, the Gross Settlement Amount consists of the following elements: (1)
27 payment of the Individual Class Payments to the Participating Class Members; (2) Class Counsel Fees
28 Payment and Class Counsel Litigation Expenses Payment; (3) Administration Expenses Payment; (4)
the Class Representative Service Payment to Plaintiff; and (5) the PAGA Penalties payment.
(Agreement at ¶ 1.23.) The Gross Settlement Amount does not include Defendant's share of payroll
taxes. (Agreement at ¶ 3.1.) The Gross Settlement Amount shall be all-in with no reversion to

1 Defendant. (Agreement at ¶ 3.1.) Decl. Nordrehaug at ¶15.

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

7 The amount remaining in the Gross Settlement Amount after the deduction of Court-approved
8 amounts for Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service
9 Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the
10 Administration Expenses Payment (called the "Net Settlement Amount") shall be allocated to Class
11 Members as their Individual Class Payments. (Agreement at ¶¶ 1.28 and 3.2.) From the Net Settlement
12 Amount, the Individual Class Payment for each Participating Class Member will be calculated by (a)
13 dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating
14 Class Members during the Class Period and (b) multiplying the result by each Participating Class
15 Member's Workweeks. (Agreement at ¶ 3.2(e).) Workweeks will initially be based on Defendant's
16 records; however, Class Members will have the right to challenge the number of Workweeks. Decl.
17 Nordrehaug at ¶17.

18 Class Members may choose to opt-out of the Settlement by following the directions in the Class
19 Notice. (Agreement at ¶ 8.5, Ex. A.) All Class Members who do not "opt out" will be deemed
20 Participating Class Members who will be bound by the Settlement and will be entitled to receive an
21 Individual Class Payment. (Agreement at ¶ 8.5(c).) All Aggrieved Employees, including those who
22 submit an opt-out request, will still be paid their allocation of the PAGA Penalties and will remain
23 subject to the release of the Released PAGA Claims regardless of their request for exclusion.
24 (Agreement at ¶¶ 6.3 and 8.5(d).) Finally, the Class Notice will advise the Class Members of their right
25 to object to the Settlement and/or dispute their Workweeks. (Agreement at ¶¶ 8.6 and 8.7, Ex. A.)
26 Decl. Nordrehaug at ¶18.

27 A Participating Class Member must cash his or her Individual Class Payment check within 180
28 days after it is mailed. (Agreement at ¶ 5.2.) Any settlement checks not cashed within 180 days will

1 be voided and any funds represented by such checks to the California Controller's Unclaimed Property
2 Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements
3 of California Code of Civil Procedure Section 384, subd. (b). (Agreement at ¶ 5.4.) Decl. Nordrehaug
4 at ¶19.

5 Subject to Court approval, the Parties have agreed on ILYM Group to administer the settlement
6 in this action ("Administrator"). (Agreement at ¶ 1.2.) The Administrator will be paid for settlement
7 administration in an amount not to exceed \$8,000. (Agreement at ¶ 3.2(c).) Decl. Nordrehaug at ¶20.

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, as the Class Counsel Fees Payment. (Agreement
10 at ¶ 3.2(b).) Class Counsel will also be allowed to apply separately for an award of Class Counsel
11 Litigation Expenses Payment in an amount not to exceed \$30,000. (Agreement at ¶ 3.2(b).) Subject
12 to Court approval, the Agreement provides for a payment of no more than \$12,500 to the Plaintiff as
13 the Class Representative Service Payment. (Agreement at ¶ 3.2(a).) Decl. Nordrehaug at ¶21.

14 Subject to Court approval, Twenty Thousand Dollars (\$20,000) will be paid from the Gross
15 Settlement Amount for PAGA penalties under the California Private Attorneys General Act, Cal. Labor
16 Code Section 2698, *et seq.* ("PAGA"). Pursuant to the express requirements of Labor Code § 2699(i),
17 the PAGA Payment shall be allocated as follows: 75% (\$15,000) shall be allocated to the Labor
18 Workforce Development Agency ("LWDA") as its share of the civil penalties and 25% (\$5,000)
19 allocated to the Individual PAGA Payments to be distributed to the Aggrieved Employees based on the
20 number of their respective PAGA Pay Periods. (Agreement at ¶ 3.2(d).) As set forth in the
21 accompanying proof of service, the LWDA has been served with this motion and the Agreement. Decl.
22 Nordrehaug at ¶22.

23 **III. CASE BACKGROUND**

24 The description of the case and claims, along with the procedural history, is set forth in the
25 Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and the
26 exchange of documents and information in connection with the Action which permitted Class Counsel
27 to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and 14. The Parties participated
28 in mediation on August 24, 2023 with Mark Rudy, Esq., which after arm's length negotiations, resulted

1 in this Settlement. Decl. Nordrehaug, ¶12.

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

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

12 Preliminary approval is the first of three steps that comprise the approval procedure for
13 settlements of class actions. The second step is the dissemination of notice of the settlement to all class
14 members. The third step is a final settlement approval hearing, at which evidence and argument
15 concerning the fairness, adequacy, and reasonableness of the settlement may be presented, and class
16 members may be heard regarding the settlement. *See Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
17 1801 (1996); *Manual for Complex Litigation, Second* §30.44 (1993); Cal. Rules of Court, rule 3.769.

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

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 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 245 (2001) (citation omitted); see also *Cho v.*
2 *Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th 734, 742-45 (2009) (upholding trial court's
3 determination that settlement was "fair, reasonable and adequate" where the settlement "provided
4 valuable benefits to the class ... that were 'particularly valuable in light of the risks plaintiff would have
5 faced if she proceeded to litigate her case.'"); *Newberg*, 3d Ed., §11.41, p.11-88. However, the ultimate
6 question of whether the proposed settlement is fair, reasonable and adequate is made after notice of the
7 settlement is given to the class members and a final settlement hearing is held by the Court.

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

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

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

24 With regard to class action settlements, the opinions of counsel should be given considerable
25 weight both because of counsel's familiarity with this litigation and previous experience with cases such
26 as these. *Officers for Justice*, 688 F.2d at 625. "The recommendations of plaintiffs' counsel should be
27 given a presumption of reasonableness." *Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 622 (N.D. Cal.
28 1979). As a result, courts hold that the recommendation of counsel is entitled to significant weight.

1 *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004).

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

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

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

16 This settlement is the result of extensive and hard-fought litigation as well as negotiations before
17 an experienced and well-respected mediator. Defendant has expressly denied and continues to deny any
18 wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff and Class
19 Counsel have determined that it is desirable and beneficial to the Class to resolve the Released Class
20 Claims of the Class in accordance with this Settlement.³

21
22 ³ The release applicable to the Class is tethered to allegations in the Action as the "Released Class
23 Claims" are "all claims debts, liabilities, demands, actions or causes of action that were alleged, or
24 reasonably could have been alleged, based facts stated in the Operative Complaint which occurred
25 during the Class Period, including all claims for restitution and other equitable relief, claims for unpaid
26 minimum and overtime wages, timeliness of earned wages, liquidated damages, failure to provide meal
27 and/or rest periods or to pay meal and rest period premiums, waiting time penalties, unfair business
28 practices, expense reimbursement, proper calculation of the regular rate of pay, unpaid sick pay, unpaid
hours worked, and failure to provide accurate wage statements. Except as expressly set forth in this
Agreement, Participating Class Members do not release any other claims, including claims for vested
benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment
insurance, disability, social security, workers' compensation, or Class claims based on facts occurring
outside the Class Period." (Agreement at ¶¶ 1.38 and 6.2.)

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. The view of qualified and well-informed
5 counsel that a class action settlement is fair, adequate, and reasonable is entitled to significant weight.
6 *See Kullar v. Foot Locker*, 168 Cal. App. 4th 116, 133 (2008) (the trial court "undoubtedly should
7 continue to place reliance on the competence and integrity of counsel, the involvement of a qualified
8 mediator, and the paucity of objectors to the settlement."); *Dunk*, 48 Cal. App. 4th at 1802.

9 The Parties attended an arms-length mediation session with Mark Rudy, a respected and
10 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
11 for the mediation, Defendant provided Class Counsel with necessary information for the members of
12 the Class, including payroll information and data concerning the composition of the Class. Plaintiff
13 analyzed the data with the assistance of damages expert, Berger Consulting, and prepared and submitted
14 a mediation brief and damage valuation to the Mediator. Following this mediation, the Parties agreed
15 to the basic terms of a settlement based upon a mediator's proposal. The final settlement terms were
16 negotiated and set forth in the Agreement now presented for this Court's approval. Decl. Nordrehaug
17 at ¶ 5. Importantly, Plaintiff and Class Counsel believe that this Settlement is fair, reasonable and
18 adequate.

19 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant is
20 Eight Hundred Thousand Dollars (\$800,000). The Settlement is all-in with no reversion to Defendant
21 and no need to submit a claim form. Decl. Nordrehaug at ¶ 3.

22 Class Counsel has conducted a thorough investigation into the facts of the class action. Over
23 the course of more than a year, Class Counsel diligently evaluated the Class Members' claims against
24 Defendant. Prior to the settlement negotiations, counsel for Defendant provided Class Counsel with
25 access to necessary information for the Class. In addition, Class Counsel previously negotiated
26 settlements with other employers in actions involving nearly identical issues and analogous defenses.
27 Based on the foregoing data and their own independent investigation, evaluation and experience, Class
28 Counsel believes that the settlement with Defendant on the terms set forth in the Agreement is fair,

1 reasonable, and adequate and is in the best interest of the Class in light of all known facts and
2 circumstances, including the risk of significant delay, defenses asserted by Defendant, and potential
3 appellate issues. Decl. Nordrehaug at ¶ 14.

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

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

16 **2. The Settlement Has No "Obvious Deficiencies" and Falls Well Within** 17 **the Range for Approval**

18 The proposed Settlement herein has no "obvious deficiencies" and is well within the range of
19 possible approval. All Class Members will receive an opportunity to participate in the Settlement and
20 receive payment according to the same formula. (Agreement at ¶ 3.2(e).) Based upon 189 Class
21 Members who collectively worked 8,000 Workweeks (Agreement at ¶ 4.1), which were the estimated
22 class figures at mediation, the Gross Settlement Amount provides a value of \$4,232 per Class Member
23 and \$100 per Workweek and after deductions, the Net Settlement Amount provides an average recovery
24 of \$2,448.85 per Class Member and a recovery of \$57.85 per Workweek. Decl. Nordrehaug, ¶6.

25 The calculations to compensate for the amount due to the Class Members at the time this
26 Settlement was negotiated were calculated by Plaintiff’s expert, Berger Consulting, in advance of
27 mediation. Class Counsel analyzed the data for putative class members and determined the potential
28 maximum damages for the class claims. For the Class, the maximum value of the claim for unpaid

1 wages due to alleged miscalculation of the regular rate for overtime was \$7,181, the maximum value
2 of the claim for unpaid wages due to alleged off-the-clock work was \$341,273, the maximum potential
3 damages for unpaid meal premiums were estimated to be \$623,689 based upon a 100% violation rate
4 in the absence of proper records and after deduction for meal premiums paid, the maximum potential
5 rest period damages were estimated to be \$1,152,677 based upon a 100% violation rate, and the
6 maximum potential damages for failure to provide expense reimbursement were calculated to be
7 \$8,800. In total, the damages for the Class were calculated to have a maximum potential total value of
8 \$17,755,870. In addition, Plaintiff calculated that the maximum value of the potential waiting time
9 penalties was \$1,006,510, and the maximum value of the potential waiting time penalties was
10 \$176,150.⁴ Decl. Nordrehaug, ¶6.

11 Consequently, the Gross Settlement Amount represents more than 37% of the potential
12 maximum damages at issue for the Class in this case, assuming these amounts could all be proven in
13 full at trial.⁵ The use of 100% violation rate for meal and rest periods likely overstates the damages for
14 these claims as Class Members would have received some breaks. The above maximum calculations
15 should then be adjusted in consideration for both the risk of class certification and the risk of
16 establishing class-wide liability on all claims. Given the amount of the Settlement as compared to the
17 potential value of the claims, the Settlement is most certainly fair and reasonable.⁶ Clearly, the goal of

18
19 ⁴ While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and 226,
20 at mediation Plaintiff recognized that these claims were subject to additional, separate defenses asserted
21 by Defendant, including, a good faith dispute defense as to whether any premium wages for meal or rest
22 periods or other wages were owed given Defendant's position that Plaintiff and Class Members were
23 properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584 (2010) ("There
24 is no willful failure to pay wages if the employer and employee have a good faith dispute as to whether
25 and when the wages were due.").

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

⁶ *See Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)
approving settlement which represented "roughly one-sixth of the potential recovery"; *Stovall-Gusman*
v. W.W. Granger, Inc., 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval
where "the proposed Total Settlement Amount represents approximately 10% of what class might have
been awarded had they succeeded at trial."); *Viceral v. Mistras Grp., Inc.*, 2016 WL 5907869 (N.D. Cal.

1 this litigation has been met. Decl. Nordrehaug, ¶6.

2 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
3 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
4 Defendant present serious threats to the claims of the Plaintiff and the other Class Members. Defendant
5 asserted that Defendant's practices complied with all applicable Labor laws. Defendant argued that all
6 work time was properly recorded and paid for and that there was no miscalculation of the regular rate.
7 Defendant contended that their meal and rest period policies complied with California law and
8 Defendant did not fail to provide the opportunity for legally required meal and rest breaks. Defendant
9 showed that some meal and rest period premiums were paid, which could be argued established the
10 lawfulness of their practices. As to expenses reimbursement, Defendant contended that they did not fail
11 to provide reimbursement for necessary business expenses and that claimed expenses were incurred
12 voluntarily and/or for the convenience of employees and is therefore not required reimbursement.
13 Defendant argued that the decisions in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), *Lockheed*
14 *Martin Corp. v. Superior Ct.*, 29 Cal. 4th 1096, 1108 (2003), and *Salazar v. See's Candy Shops Inc.*,
15 64 Cal.App.5th 85 (2021), weakened Plaintiff's claims, on liability, value, and class certifiability as to
16 the meal and rest period claims. Defendant also argued that based on their facially lawful policies, they
17 acted in good faith and without willfulness, which if accepted would negate the claims for waiting time
18 penalties and/or inaccurate wage statements. If successful, Defendant's defenses could eliminate or
19 substantially reduce any recovery to the Class. While Plaintiff believes that these defenses could be
20 overcome, Defendant maintains these defenses have merit and therefore present a serious risk to
21 recovery by the Class. Decl. Nordrehaug, ¶ 24.

22 There was also a significant risk that, if the Action was not settled, Plaintiff would be unable
23 to obtain class certification and thereby not recover on behalf of any employees other than himself.
24 Defendant argued that the individual experience of each putative class member varied with respect to
25 the claims. Defendant could also contest class certification by arguing injury and good faith were case-

26 _____
27 2016) (approving wage and hour class action settlement amounting to 8.1% of full verdict value); *Ma*
28 *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 by-case determinations that precluded class certification. Plaintiff is aware of other cases where class
2 certification of similar claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th 885 (2019)
3 (denying certification of rest break claims). Finally, even if class certification was successful, as
4 demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal.
5 4th 1 (2014), there are significant hurdles to overcome for a class wide recovery even where the class
6 has been certified. While other cases have approved class certification in wage and hour claims, class
7 certification in this action would have been hotly disputed and was by no means a foregone conclusion.
8 Decl. Nordrehaug, ¶ 25.

9 After arm's length negotiations between experienced and informed counsel, the Parties
10 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of
11 \$800,000.00. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

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

18 2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
19 (9th Cir. 2000)).

20 3. The Settlement Does Not Improperly Grant Preferential Treatment To 21 Class Representatives or Segments of The Class

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

27 Plaintiff will apply to the Court for a Class Representative Service Payment in consideration for
28 his service and for the risks undertaken on behalf of the class. (Agreement at ¶ 3.2(a).) Plaintiff
performed her duties admirably by working with Class Counsel. Decl. Nordrehaug at ¶27. A
declaration of the Plaintiff is presented in support. For purposes of this preliminary approval stage, the
requested service award is within the accepted range of awards for purposes of preliminary approval.

1 See e.g. *Andrews v. Plains All Am. Pipeline L.P.*, 2022 U.S. Dist. LEXIS 172183, at *11 (C.D. Cal.
2 2022) (finding that the requested service awards of \$15,000 each are appropriate); *Reynolds v. Direct*
3 *Flow Med., Inc.*, 2019 U.S. Dist. LEXIS 149865, at *19 (N.D. Cal. 2019) (granting request for \$12,500
4 service award); *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018)
5 (awarding \$12,500 where average class member payment was \$351); *Louie v. Kaiser Foundation*
6 *Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D.Cal. 2008) (awarding \$25,000 service award to each of
7 six plaintiffs in overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D.Cal.
8 2007) (awarding \$25,000 service award in overtime class action and a pool of \$100,000 in
9 enhancements). As explained in *Glass*, service awards are routinely awarded to class representatives
10 to compensate the employees for the time and effort expended on the case, for the risk of litigation, for
11 the fear of suing an employer and retaliation therefrom, and to serve as an incentive to vindicate the
12 statutory rights of all employees. 2007 WL 221862 at *16-17.

13 4. The Stage Of The Proceedings Are Sufficiently Advanced To Permit 14 Preliminary Approval Of The Settlement

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

24 Based on the foregoing data and their own independent investigation and evaluation, Class
25 Counsel is of the opinion that the Settlement with Defendant for the consideration and on the terms set
26 forth in the Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light
27 of all known facts and circumstances, including the risk of significant delay, defenses asserted by
28 Defendant, and numerous potential appellate issues. There can be no doubt that Counsel for both

1 parties possessed sufficient information to make an informed judgment regarding the likelihood of
2 success on the merits and the results that could be obtained through further litigation. Decl. Nordrehaug
3 at ¶29.

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

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

10 *Glass*, 2007 U.S. Dist. LEXIS 8476 at *14 (quoting *In re Mego Financial Corp. Securities Litigation*,
11 213 F.3d at 459).

12 Here, Class Counsel was in a better position to evaluate the fairness of this Settlement because
13 Class Counsel received a production of documents through informal discovery, received all necessary
14 information which was evaluated with the assistance of an expert, and performed independent
15 investigations and due diligence to confirm the accuracy of the information supplied by Defendant.

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

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

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

23 (Agreement at ¶ 1.5.)

24 The "Class Period" is from December 1, 2018 through November 23, 2023. (Agreement at ¶ 1.13.)

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

26 Plaintiff seeks certification of this Class for settlement purposes under California Code of Civil
27 Procedure § 382. The California Supreme Court has summarized the standard for determining whether
28 class certification is appropriate as follows:

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

1 has the burden to establish the existence of both an ascertainable class and a well-
2 defined community of interest among class members. (*citations omitted*). The
3 “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.

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

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

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

10 Plaintiff brings this Action on behalf of a Class of non-exempt employees who worked for
11 Defendant in California during the applicable Class Period. Plaintiff asserts that all of these individuals
12 are ascertainable because the class members can readily be determined through examination of
13 Defendant’s files. Given that the Class consists of approximately 189 members, Plaintiff maintains that
14 numerosity is clearly satisfied. *See Bowles v. Superior Court*, 44 Cal.2d 574 (1955) (class with 10
15 members sufficiently numerous); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of
16 48 members satisfies numerosity requirement.) Here, Plaintiff asserts that the 189 individuals who
17 comprise the Class can be identified based on Defendant’s records and are sufficiently numerous for
18 class certification. Decl. Nordrehaug at ¶30.

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

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

25 Commonality exists if there is a predominant common legal question regarding how an
26 employer’s policies impact its employees. *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524,
27 1536 (2008) (“[T]he common legal question remains the overall impact of Diva's policies on its
28 drivers.”) Whether the plaintiff is likely to prevail on their theory of recovery is irrelevant at the

1 certification stage since the question is “essentially a procedural one that does not ask whether an action
2 is legally or factually meritorious.” *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2003).

3 Here, Plaintiff contends that common questions of law and fact are present, and specifically the
4 common questions of whether Defendant’s practices were lawful, whether Class members were lawfully
5 compensated for all hours worked, whether Defendant properly calculated wages, whether the
6 Defendant failed to provide all legally required meal and rest periods to class members, whether
7 Defendant failed to provide required expense reimbursement, and whether Class Members are entitled
8 to damages and penalties as a result of these practices. Decl. Nordrehaug, ¶30. Defendant disputes that
9 common questions predominate but will not oppose such a finding for purposes of this Settlement only.

10 **D. The Claims of the Plaintiff Are Typical of the Class Claims**

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

17 In this Action, Plaintiff contends that there can be little doubt that the typicality requirement is
18 satisfied. The Plaintiff worked for Defendant as a non-exempt employee during the Class Period.
19 Plaintiff contends that, like every other member of the Class, she was subject to the same practices and
20 policies of Defendant and was subject to the same defenses. Thus, Plaintiff asserts that the claims of
21 the Plaintiff and the Class Members arise from the same course of conduct by the Defendant, involve
22 the same employment policies and practices of Defendant, and are based on the same legal theories.
23 Decl. Nordrehaug at ¶30. For purposes of settlement, Plaintiff maintains that the typicality requirement
24 is met as to the common issues presented in this case. Defendant disputes typicality but Defendant does
25 not oppose a finding of typicality for purposes of this Settlement only.

26 **E. The Class Representative Fairly and Adequately Protected the Class**

27 Plaintiff contends that the Class Members are adequately represented here because Plaintiff and
28 representing counsel (a) do not have any conflicts of interest with other class members, and (b) will

1 prosecute the case vigorously on behalf of the class. *Hanlon*, 150 F.3d at 1020. This requirement is
2 met here. First, Plaintiff is well aware of her duties as the representative of the class and has actively
3 participated in the prosecution of this case to date. Plaintiff effectively communicated with counsel,
4 provided documents to counsel and participated in the investigation and negotiations in the Action.
5 Second, Plaintiff retained competent counsel who are experienced in employment class actions and who
6 have no conflicts. Decl. Nordrehaug at ¶ 31. Third, there is no antagonism between the interests of the
7 Plaintiff and those of the Class. Both the Plaintiff and the Class Members seek monetary relief under
8 the same set of facts and legal theories. Defendant disputes that the adequacy requirement is satisfied
9 but will not oppose such a finding for purposes of this Settlement only.

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

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

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

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

23 Here, Plaintiff contends that a class action is the superior mechanism for resolution of the claims
24 as pled by the Plaintiff. While Defendant disputes that class treatment is superior, Defendant does not
25 dispute a finding of superiority in this action for purposes of this Settlement only.

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

27 The Court has broad discretion in approving a practical notice program. *7- Eleven Owners for*
28 *Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1164 (2000). The Parties have agreed
upon procedures by which the Class Members will be provided with written notice of the Settlement
similar to those approved and utilized in hundreds of class action settlements. In accordance with the

1 Agreement, Defendant will provide to the Administrator a confidential electronic spreadsheet
2 containing the Class Data. (Agreement at ¶ 4.2.) Within 14 days after receiving the Class Data, the
3 Administrator will mail the Class Notice to all Class Members via first-class U.S. Mail using the most
4 current mailing address information available. (Agreement at ¶ 8.4(b).)

5 The Class Notice, drafted jointly and agreed upon by the Parties through their respective counsel
6 and to be approved by the Court, includes all relevant information. (*See Exhibit "A" to the Agreement.*)

7 The Class Notice will include, among other information: (i) information regarding the Action; (ii) the
8 impact on the rights of the Class Members if they do not opt out, including a description of the
9 applicable release; (iii) information to the Class Members regarding how to opt out and how to object
10 to the Settlement; (iv) the estimated Individual Class Payment for each of the Class Members; (iii) the
11 amount of attorneys' fees and expenses to be sought; (v) the amount of the Plaintiff's service award
12 request; and (vi) the anticipated expenses of the Administrator. Decl. Nordrehaug at ¶32.

13 The Class Notice will state that the Class Members shall have sixty (60) days from the date that
14 the Notice is mailed to them (the "Response Deadline") to request exclusion (opt-out) or to submit an
15 objection, which Response Deadline shall be extended by 14 days in the event of a re-mailing.
16 (Agreement at ¶¶ 1.42, 8.5, 8.7.) Class Members shall be given the opportunity to object to the
17 Settlement and/or requests for attorneys' fees and expenses and to appear at the Final Approval Hearing.
18 (Agreement at ¶ 8.7.) Class Members who do not submit a timely and proper request to opt-out will
19 automatically receive a payment of their Individual Class Payment. This notice program was designed
20 to meaningfully reach the Class Members and it advises them of all pertinent information concerning
21 the Settlement. Decl. Nordrehaug at ¶32. The mailing and distribution of the Class Notice satisfies the
22 requirements of due process and is the best notice practicable under the circumstances and complies
23 with Rules of Court 3.766 and 3.769(f).

24 **VII. CONCLUSION**

25 Plaintiff respectfully requests that the Court preliminarily approve the proposed settlement and
26 sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the final
27 fairness hearing for the proposed date of July 30, 2024.

1 Dated: February 8, 2024

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

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3 By: /s/ Kyle Nordrehaug
4 Kyle R. Nordrehaug, Esq.
5 Attorney for Plaintiff
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