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

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

15 JILEEA JORDAN, an individual, on behalf of
16 herself and on behalf of all persons similarly
17 situated, and on behalf of the State of
18 California as a private attorney general,

19 Plaintiffs,

20 vs.

21 WAX CENTER PARTNERS
22 INTERMEDIATE HOLDCO LLC, a Limited
23 Liability Company; WAX CENTER
24 PARTNERS HOLDCO LLC, a Limited
25 Liability Company; and DOES 1 through 50,
26 inclusive,

27 Defendants.

CASE NO.: **22CV018596**

[Consolidated with Case No. 22CV024363]

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

Hearing Date: February 16, 2024

Hearing Time: 9:00 a.m.

Reservation ID: 483049915868

Judge: Hon. Noel Wise

Dept.: 21

Action Filed: September 27, 2022

Trial Date: Not set

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1 **I. INTRODUCTION**

2 Plaintiff Jileea Jordan (“Plaintiff”) respectfully submits this memorandum in support of the
3 unopposed motion for preliminary approval of the proposed class action settlement with Defendants
4 Wax Center Partners Intermediate Holdco LLC and Wax Center Partners Holdco LLC (“Defendants”),
5 and seek entry of an order: (1) preliminarily approving the proposed settlement of this class action with
6 Defendants; (2) for settlement purposes only, conditionally certifying the Class, which is comprised
7 of “all non-exempt employees who worked in California for Defendants Wax Center Partners
8 Intermediate Holdco LLC and/or Wax Center Partners Holdco LLC at any time during the Class
9 Period”, which is September 27, 2018, through August 17, 2023; (3) provisionally appointing Plaintiff
10 as the representative of the Class; (4) provisionally appointing Norman B. Blumenthal, Kyle R.
11 Nordrehaug, Aparajit Bhowmik, Nicholas J. DeBlouw, and Christine T. LeVu of Blumenthal
12 Nordrehaug Bhowmik De Blouw LLP as Class Counsel; (5) approving the form and method for
13 providing class-wide notice; (6) directing that notice of the proposed settlement be given to the class;
14 (7) appointing ILYM Group as Administrator, and (8) scheduling a final approval hearing date,
15 proposed for June 26, 2024 which is at least 120 days from preliminary approval, to consider Plaintiff’s
16 motion for final approval of the settlement and for approval of attorneys’ fees and expenses. Plaintiffs
17 and Defendants (collectively the “Parties”) have reached a full and final settlement of the
18 above-captioned action, which is embodied in the Class Action and PAGA Settlement Agreement
19 (“Agreement”) filed concurrently with the Court.¹ A copy of the fully executed Agreement is attached
20 as Exhibit #1 to the Declaration of Kyle Nordrehaug (“Decl. Nordrehaug”), served and filed herewith.
21 The form of the Agreement is based upon the Los Angeles County Superior Court model form for a
22 class and PAGA settlement.

23 As consideration for this Settlement, the non-reversionary Gross Settlement Amount of Seven
24 Hundred Fifty Thousand Dollars (\$750,000) (the “Gross Settlement Amount”) is to be paid by
25 Defendants, as set forth in the Agreement. The Gross Settlement Amount will settle all issues pending
26 in the Action between the Parties and will be made in full and final settlement of the Released Class

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

1 Claims in exchange for the payments to Participating Class Members from the Net Settlement Amount,
2 and includes (a) the costs of administration of the settlement, (b) all attorneys' fees and costs, (c) Class
3 Representative Service Payment, and (d) the PAGA Penalties payment allocated 75% to the LWDA
4 and 25% to the Aggrieved Employees. (Agreement at ¶ 1.23.) Decl. Nordrehaug at ¶3.

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

7 **\$750,000** (Gross Settlement Amount)

- 8 - \$10,000 (Plaintiff's proposed service award not to exceed \$10,000 each)
- 9 - \$17,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- 10 - \$250,000 (Class Counsel Fees Payment - not to exceed 1/3 of settlement)
- 11 - \$15,000 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
- 12 - \$16,000 (Administration Expenses Payment - not to exceed amount)

13 **\$442,000** (Net Settlement Amount)

14 Based upon 1,043 Class Members who collectively worked 52,666 Workweeks (Agreement at ¶ 4.1),
15 the Gross Settlement Amount provides an average value of \$719 per Class Member and \$14 per
16 Workweek and after deductions the Net Settlement Amount provides an average recovery of \$423.77
17 per Class Member and a recovery of \$8.39 per Workweek. Decl. Nordrehaug at ¶6.

18 On May 17, 2023, the Parties participated in an all-day mediation session presided over Louis
19 Marlin, a respected jurist and experienced mediator of wage and hour class actions. Following the
20 mediation, the Parties agreed on the basic terms of a settlement pursuant to a mediator's proposal which
21 was memorialized in the form of a Memorandum of Understanding. Decl. Nordrehaug at ¶5. The
22 Settlement is fair, reasonable and adequate, and should be preliminarily approved because there is a
23 substantial monetary payment, and there are significant litigation and class-certification risks.
24 Therefore, Plaintiff respectfully requests that this Court grant preliminary approval of the Agreement
25 and enter the proposed order submitted herewith.

26 **II. DESCRIPTION OF THE SETTLEMENT**

27 The Gross Settlement Amount is Seven Hundred Fifty Thousand Dollars (\$750,000).
28 (Agreement at ¶ 1.22.) Under the Settlement, the Gross Settlement Amount consists of the following
elements: (1) payment of the Individual Class Payments to the Participating Class Members; (2) Class
Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (3) Administration Expenses
Payment; (4) the Class Representative Service Payment to the Plaintiff; and (5) the PAGA Penalties

1 payment. (Agreement at ¶ 1.23.) The Gross Settlement Amount does not include Defendants' share
2 of payroll taxes. (Agreement at ¶ 3.1.) The Gross Settlement Amount shall be all-in with no reversion
3 to Defendants. (Agreement at ¶ 3.1.) Decl. Nordrehaug at ¶15.

4 Within fifteen (15) days of the Effective Date, Defendants shall deposit the Gross Settlement
5 Amount with the Administrator. (Agreement at ¶ 4.3.) The distribution of Individual Class Payments
6 to Participating Class Members along with the other Court-approved distributions shall be made by the
7 Administrator within fourteen (14) days after Defendants fund the Gross Settlement Amount.
8 (Agreement at ¶ 5.1.) Decl. Nordrehaug at ¶16.

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

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

1 A Participating Class Member must cash his or her Individual Class Payment check within 180
2 days after it is mailed. (Agreement at ¶ 5.2.) Any settlement checks not cashed within 180 days will
3 be voided and any funds represented by such checks sent to the California Controller's Unclaimed
4 Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the
5 requirements of C.C.P. § 384(b). (Agreement at ¶ 5.4.) Decl. Nordrehaug at ¶19.

6 Subject to Court approval, the Parties have agreed on ILYM Group to administer the settlement
7 in this action ("Administrator"). (Agreement at ¶ 1.2.) The Administrator will be paid for settlement
8 administration in an amount not to exceed \$16,000. (Agreement at ¶ 3.2(c).) ILYM provided an
9 estimate of \$14,320 for administration expenses. Decl. Nordrehaug at ¶20.

10 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
11 to exceed one-third of the Gross Settlement Amount, as the Class Counsel Fees Payment. (Agreement
12 at ¶ 3.2(b).) Class Counsel will also be allowed to apply separately for an award of Class Counsel
13 Litigation Expenses Payment in an amount not to exceed \$17,000. (Agreement at ¶ 3.2(b).) Subject
14 to Court approval, the Agreement provides for a payment of no more than \$10,000 to the Plaintiff as
15 the Class Representative Service Payment. (Agreement at ¶ 3.2(a).) Decl. Nordrehaug at ¶21.

16 Subject to Court approval, the PAGA Penalties will be paid from the Gross Settlement Amount
17 for PAGA penalties under the California Private Attorneys General Act, Cal. Labor Code Section 2698,
18 *et seq.* ("PAGA"). The PAGA Penalties are \$15,000. (Agreement at ¶¶ 1.36 and 3.2(d).) Pursuant to
19 the express requirements of Labor Code § 2699(i), the PAGA Payment shall be allocated as follows:
20 75% shall be allocated to the Labor Workforce Development Agency ("LWDA") as its share of the civil
21 penalties and 25% allocated to the Individual PAGA Payments to be distributed to the Aggrieved
22 Employees based on the number of their respective PAGA Pay Periods. (Agreement at ¶ 3.2(d).) As
23 set forth in the accompanying proof of service, the LWDA has been served with this motion and the
24 Agreement. Decl. Nordrehaug at ¶22.

25 **III. CASE BACKGROUND**

26 The description of the case and claims, along with the procedural history is set forth in the
27 Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and the
28 exchange of documents and information in connection with the Action for more than a year which

1 permitted Class Counsel to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and
2 14. The Parties participated in mediation on May 17, 2023 with Louis Marlin, which after arms' length
3 negotiations both during and after the mediation, resulted in this Settlement. Decl. Nordrehaug, ¶12.

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

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."
20 *Manual for Complex Litigation, Second* §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th
21 Cir. 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 In considering a potential settlement for preliminary approval purposes, the trial court does not have
12 to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute,
13 and need not engage in a trial on the merits. *Wershba, supra*, 91 Cal.App.4th at 239-40; *Dunk, supra*,
14 48 Cal.App. 4th at 1807. The Ninth Circuit explains, "the very essence of a settlement is compromise,
15 'a yielding of absolutes and an abandoning of highest hopes.'" *Officers for Justice*, 688 F.2d at 624.
16 Thus, when analyzing the settlement, the amount is "not to be judged against a hypothetical or
17 speculative measure of what might have been achieved by the negotiators." *Officers for Justice*, 688
18 F.2d at 625, 628.

19 With regard to class action settlements, the opinions of counsel should be given considerable
20 weight both because of counsel's familiarity with this litigation and previous experience with cases
21 such as these. *Officers for Justice*, 688 F.2d at 625. As a result, courts hold that the recommendation
22 of counsel is entitled to significant weight. *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221
23 F.R.D. 523, 528 (C.D. Cal. 2004).

24 **B. Factors To Be Considered In Granting Preliminarily Approval**

25 A number of factors are to be considered in evaluating a settlement for purposes of preliminary
26 approval. In determining whether to grant preliminary approval, the court considers whether the "(1)
27 the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, (2)
28 has no obvious deficiencies, (3) does not improperly grant preferential treatment to class representatives

1 or segments of the class, and (4) falls within the range of possible approval." *In re Tableware Antitrust*
2 *Litig.*, 484 F.Supp. 2d 1078, 1079 (N.D. Cal. 2007). Courts hold that "a presumption of fairness exists
3 where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery
4 are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
5 litigation; and (4) the percentage of objectors is small." *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.
6 App. 4th 116, 128 (2008). Here, the Settlement meets all of these criteria for preliminary approval and
7 therefore the presumption applies.

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

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

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

23 The Parties attended an arms-length mediation session with Louis Marlin, a respected jurist and

24
25 ³ The release applicable to the Class is appropriately tethered to allegations in the Action as the
26 "Released Class Claims" are defined as "all class claims plead or which could have been plead based
27 on the factual allegations contained in the Operative Complaint which occurred during the Class Period.
28 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 claims
based on facts occurring outside the Class Period." (Agreement at ¶¶ 1.40 and 6.2.)

1 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
2 for the mediation, Defendant provided Class Counsel with payroll and employment data and other
3 information regarding the Class Members, various internal documents, and other compensation and
4 employment-related materials. Class Counsel analyzed the data with the assistance of damages expert
5 Berger Consulting and prepared and submitted a mediation brief to the mediator. The final settlement
6 terms were negotiated and set forth in the Agreement now presented for this Court's approval. Decl.
7 Nordrehaug at ¶ 5. Importantly, Plaintiff and Class Counsel believe that this Settlement is fair,
8 reasonable and adequate.

9 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant is
10 Seven Hundred Fifty Thousand Dollars (\$750,000). The Settlement is all-in with no reversion to
11 Defendant and no need to submit a claim form. Decl. Nordrehaug at ¶ 3.

12 Class Counsel has conducted an investigation into the facts of the class action. Informal
13 discovery was obtained, which included the production of thousands of pages of relevant documents.
14 Class Counsel engaged in a thorough review and analysis of the relevant documents and data with the
15 assistance of an expert. Accordingly, the agreement to settle did not occur until Class Counsel
16 possessed sufficient information to make an informed judgment regarding the likelihood of success on
17 the merits and the results that could be obtained through further litigation. In addition, Class Counsel
18 previously negotiated settlements with other employers in actions involving nearly identical issues and
19 analogous defenses. Based on the foregoing data and their own independent investigation, evaluation
20 and experience, Class Counsel believes that the settlement with Defendant on the terms set forth in the
21 Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known
22 facts and circumstances, including the risk of significant delay, defenses asserted by Defendant, and
23 potential appellate issues. Decl. Nordrehaug at ¶ 14.

24 Plaintiffs and Class Counsel recognize the expense and length of continuing to litigate and
25 trying this Action against Defendants through possible appeals which could take several years. Class
26 Counsel has also taken into account the uncertain outcome and risk of litigation, especially in complex
27 class actions such as this Action. Class Counsel is also mindful of and recognize the inherent problems
28 of proof under, and alleged defenses to, the claims asserted in the Action. Based upon their evaluation,

1 Plaintiffs and Class Counsel have determined that the Settlement set forth in the Agreement is in the
2 best interest of the Class Members. Decl. Nordrehaug, ¶ 23.

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

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

10 The proposed Settlement herein has no "obvious deficiencies" and is well within the range of
11 possible approval. All Class Members will receive an opportunity to participate in the Settlement and
12 receive payment according to the same formula. (Agreement at ¶ 3.2(e).) Based upon 1,043 Class
13 Members who collectively worked 52,666 Workweeks (Agreement at ¶ 4.1), the Gross Settlement
14 Amount provides an average value of \$719 per Class Member and \$14 per Workweek and after
15 deductions the Net Settlement Amount provides an average recovery of \$423.77 per Class Member and
16 a recovery of \$8.39 per Workweek. Decl. Nordrehaug, ¶6.

17 The calculations to compensate for the amount due for the Class at the time of the mediation
18 were calculated by Berger Consulting, Plaintiff’s damage expert. As to the Class whose claims are at
19 issue in this Action, Plaintiffs used the expert to analyze the data and determine the potential unpaid
20 wages for the employees. The maximum potential damages were calculated to be \$1,032,397 for the
21 alleged unpaid wages due to off-the-clock work at 1 hour per week, \$7,744 for the alleged unpaid
22 wages due to the regular rate miscalculation applicable to vacation payout, \$656,590 for alleged meal
23 period damages based upon a 44% potential violation rate for shifts worked and after deducting the
24 meal premiums (\$144,115) actually paid by Defendant, \$1,879,015 for alleged rest period damages
25 based upon the same potential 44% violation rate observed for meal periods, \$65,003 for alleged
26 unreimbursed business expenses for personal cell phone usage at \$5 per month. Decl. Nordrehaug, ¶6.
27 As a result, the total damage valuation was calculated that Defendant was subject to a maximum
28 damage claim in the amount of \$3,575,746. As to potential penalties, Plaintiffs calculated that

1 potential waiting time penalties were a maximum of between \$309,797 and \$1,469,141, depending on
2 the predicate violation giving rise to the penalty, and potential maximum wage statement penalties were
3 \$968,100.⁴ Defendants vigorously disputed Plaintiff's calculations and exposure theories. Decl.
4 Nordrehaug, ¶6.

5 Consequently, the Gross Settlement Amount of \$750,000 represents more than 20% of the
6 maximum value of the alleged damages at issue in this case at the time this Settlement was negotiated.⁵
7 The above maximum calculations should then be adjusted in consideration for both the risk of class
8 certification and the risk of establishing class-wide liability on all claims. Given the amount of the
9 settlement as compared to the potential value of claims in this case and the defenses asserted by
10 Defendants, this settlement is fair and reasonable.⁶ Clearly, the goal of this litigation has been met.
11 Decl. Nordrehaug, ¶6.

12 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
13 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
14

15 ⁴ While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
16 226, at mediation Plaintiff recognized that these claims were subject to additional, separate defenses
17 asserted by Defendants, including, a good faith dispute defense as to whether any premium wages for
18 meal or rest periods or other wages were owed given Defendants' position that Plaintiff and Class
19 Members were properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584
20 (2010) ("There is no willful failure to pay wages if the employer and employee have a good faith
21 dispute as to whether and when the wages were due.").

22 ⁵ Because the PAGA claim is not a class claim and primarily is paid to the State of California,
23 Plaintiff did not included the PAGA claim in this discussion of the value of the class claims. The
24 PAGA claim is addressed in the Decl. Nordrehaug at ¶33.

25 ⁶ See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a
26 settlement where the settlement amount constituted approximately 25% of the estimated overtime
27 damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12
28 (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."); *Dunleavy*
v. Nadler (In re Mego Fin. Corp. Sec. Litig.), 213 F.3d 454, 459 (9th Cir. 2000) (affirming approval
of a class settlement which represented "roughly one-sixth of the potential recovery".) See also *Viceral*
v. Mistras Grp., Inc., 2016 WL 5907869 (N.D. Cal. 2016) (approving wage and hour class action
settlement amounting to 8.1% of full value); *Ma v. Covidien Holding, Inc.*, 2014 WL 2472316, (C.D.
Cal. 2014) (approving wage and hour class action settlement worth "somewhere between 9% and 18%"
of maximum valuation).

1 Defendants present serious threats to the claims of the Plaintiff and the other Class Members.
2 Defendants asserted that Defendants' practices complied with all applicable Labor laws. Defendants
3 argued that Class Members were paid for all time worked and that all work time was properly recorded.
4 Defendants contend that its meal and rest period policies fully complied with California law and
5 Defendants did not fail to provide the opportunity for legally required meal and rest breaks. Defendants
6 could argue that its payment of significant meal period premiums is evidence of lawful practices.
7 Defendants contend that there was no failure to pay for business expenses and any cell phone usage was
8 merely convenient and voluntary such that reimbursement was not legally required. Finally,
9 Defendants could argue that the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004
10 (2012), weakened Plaintiff's claims, on liability, value, and class certifiability as to the meal and rest
11 period claims. Defendants also argue that based on its facially lawful practices, Defendants acted in
12 good faith and without willfulness, which if accepted would negate the claims for waiting time penalties
13 and/or inaccurate wage statements. If successful, Defendants' defenses could eliminate or substantially
14 reduce any recovery to the Class. While Plaintiff believes that these defenses could be overcome,
15 Defendants maintain these defenses have merit and therefore present a serious risk to recovery by the
16 Class. Decl. Nordrehaug, ¶ 24.

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

26 After arm's length negotiations between experienced and informed counsel, the Parties
27 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of
28 \$750,000. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

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

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

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

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

14 Plaintiff will apply to the Court for Class Representative Service Payment in consideration for
15 her service and for the risks undertaken on behalf of the Class. (Agreement at ¶ 3.2(a).) Plaintiff
16 performed her duties admirably by working with Class Counsel over the course of litigation. The
17 Declaration of the Plaintiff is submitted herewith in support. Decl. Nordrehaug at ¶27. At this stage,
18 the requested service award of \$10,000 is well within the accepted range of awards for purposes of
19 preliminary approval. *See e.g. Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D.
20 Cal. 2018) (awarding \$12,500 where average class member payment was \$351); *Holman v. Experian*
21 *Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014) (approving \$10,000 service
22 award where class member recovery was \$375); *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008
23 WL 4473183, *7 (S.D.Cal. Oct. 06, 2008) (awarding \$25,000 service award to each of six plaintiffs
24 in overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D.Cal. Jan. 27 2007)
25 (awarding \$25,000 service award in overtime class action and a pool of \$100,000 in enhancements).
26 As explained in *Glass*, service awards are routinely awarded to class representatives to compensate the
27 employees for the time and effort expended on the case, for the risk of litigation, for the fear of suing
28 an employer and retaliation there from, and to serve as an incentive to vindicate the statutory rights of
all employees. 2007 WL 221862 at *16-17.

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

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

13 Based on the foregoing data and their own independent investigation and evaluation, Class
14 Counsel is of the opinion that the Settlement with Defendants for the consideration and on the terms
15 set forth in the Agreement is fair, reasonable, and adequate and is in the best interest of the Class in
16 light of all known facts and circumstances, including the risk of significant delay, defenses asserted by
17 Defendants, and numerous potential appellate issues. There can be no doubt that Counsel for both
18 parties possessed sufficient information to make an informed judgment regarding the likelihood of
19 success on the merits and the results that could be obtained through further litigation. Decl.
20 Nordrehaug at ¶29.

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

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

26 All non-exempt employees who worked in California for Defendants Wax Center
27 Partners Intermediate Holdco LLC and/or Wax Center Partners Holdco LLC at any time
28 during the Class Period.

(Agreement at ¶ 1.5.)

1 The Class Period is September 27, 2018 to August 17, 2023. (Agreement at ¶ 1.13.)

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

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

6 Code of Civil Procedure Section 382 authorizes class actions “when the question is one
7 of a common or general interest, of many persons, or when the parties are numerous,
8 and it is impracticable to bring them all before the court....” The party seeking
9 certification has the burden to establish the existence of both an ascertainable class and
10 a well-defined community of interest among class members. (*citations omitted*). The
11 “community of interest” requirement embodies three factors: (1) predominant common
12 questions of law or fact; (2) class representatives with claims or defenses typical of the
13 class; and (3) class representatives who can adequately represent the class.

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

15 While Defendants reserve all rights to dispute that the Plaintiff can satisfy these requirements,
16 the Parties agree that Defendants will not dispute that these requirements may be satisfied in this case
17 for purposes of settlement only and therefore, the proposed Class should be certified for purposes of
18 settlement only. (Agreement at ¶ 2.9.)

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

20 Plaintiff brings this action on behalf of a Class of non-exempt employees of Defendant during
21 the Class Period. Plaintiff asserts that all of these individuals are ascertainable because the class
22 members can readily be determined through examination of Defendants’ files. Given that the Class
23 consists of 1,043 individuals, Plaintiff maintains that numerosity is clearly satisfied. *See Bowles v.*
24 *Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose v. City of*
25 *Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.)
26 Here, Plaintiff asserts that the 1,043 current and former employees that comprise the Class can be
27 identified based on Defendants’ records and are sufficiently numerous for class certification. Decl.
28 Nordrehaug at ¶30.

C. Common Issues of Law and Fact Predominate

Predominance of common issues of law or fact does not require that the common issues be
dispositive of the entire controversy or even that they be dispositive of all liability issues. 1 *Newberg*

1 on *Class Actions*, Section 4.25 at 4-82, 4-83 (1992). “Predominance is a comparative concept, and ‘the
2 necessity for class members to individually establish eligibility and damages does not mean individual
3 fact questions predominate.’” *Sav-On*, 34 Cal. 4th at 334.

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

10 Here, Plaintiff contends that common questions of law and fact are present, specifically the
11 common questions of whether Defendants’ employment practices were lawful, whether Defendants
12 failed to provide meal and rest periods to Class Members, whether Class members were lawfully
13 compensated for all hours worked, Whether Defendants correctly calculated the regular rate, whether
14 Defendants’ alternative workweek schedule was valid, whether Defendants failed to provide required
15 expense reimbursement, and whether Class Members are entitled to damages and penalties as a result
16 of these practices. Plaintiff contends that certification of this Class is appropriate because Defendants
17 allegedly engaged in uniform practices with respect to the Class Members. As a result, these common
18 questions of liability could be answered on a class wide basis. Decl. Nordrehaug, ¶30. Defendants
19 dispute that common questions predominate but will not oppose such a finding for purposes of this
20 Settlement only.

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

22 The typicality requirement requires the Plaintiff to demonstrate that the members of the class
23 have the same or similar claims as the Plaintiff. “The typicality requirement is met when the claims
24 of the [p]laintiff arise from the same event or are based on the same legal theories.” *Tate v.*
25 *Weyerhaeuser Co.*, 723 F.2d 598, 608 (8th Cir. 1983). In *Hanlon, supra*, 150 F.3d at 1020, the Ninth
26 Circuit held that “[u]nder the rule's permissive standards, representative claims are ‘typical’ if they are
27 reasonably coextensive with those of absent class members; they need not be substantially identical.”
28

1 In this Action, Plaintiff contend that the typicality requirement is fully satisfied. Plaintiff, like
2 every other member of the Class, was employed by Defendants as non-exempt employees, and, like
3 every other member of the Class, were subject to the same employment practices. Plaintiff, like every
4 other member of the Class, also claims owed compensation as a result of the Defendants' uniform
5 company policies and practices. Thus, the claims of Plaintiff and the members of the Class arise from
6 the same course of conduct by Defendants, involve the same issues, and are based on the same legal
7 theories. Decl. Nordrehaug at ¶30. For purposes of settlement, Plaintiff asserts that the typicality
8 requirement is met as to the common issues presented in this case. Defendants do not oppose a finding
9 of typicality for purposes of this Settlement only.

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

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

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

27 To certify a class, the Court must also determine that a class action is superior to other available
28 methods for the fair and efficient adjudication of the controversy. "Where classwide litigation of

1 common issues will reduce litigation costs and promote greater efficiency, a class action may be
2 superior to other methods of litigation.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir.
3 1996). As courts have previously observed:

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

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

11 Here, Plaintiff contends that a class action is the superior mechanism for resolution of the claims
12 as pled by the Plaintiff. While Defendants dispute that class treatment is superior, Defendants do not
13 dispute a finding of superiority in this action for purposes of this Settlement only.

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

15 The Court has broad discretion in approving a practical notice program. The Parties have
16 agreed upon procedures by which the Class Members will be provided with written notice of the
17 Settlement similar to that approved and utilized in hundreds of class action settlements. In accordance
18 with the Agreement, Defendants will provide to the Administrator a confidential electronic spreadsheet
19 containing the Class Data. (Agreement at ¶ 4.2.) Within 14 days after receiving the Class Data, the
20 Administrator will mail the Class Notice to all Class Members via first-class U.S. Mail using the most
21 current mailing address information available. (Agreement at ¶ 8.4(b).) A Spanish translation of the
22 Class Notice Packet will be included in the mailing. (Agreement at ¶ 1.11.)

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

1 The Class Notice will state that the Class Members shall have sixty (60) days from the date that
2 the Class Notice is mailed to them (the “Response Deadline”) to request exclusion (opt-out) or to
3 submit a written objection. (Agreement at ¶¶ 1.44, 8.5, 8.7.) Class Members shall be given the
4 opportunity to object to the Settlement and/or requests for attorneys’ fees and expenses and to appear
5 at the Final Approval Hearing. (Agreement at ¶ 8.7.) Class Members who do not submit a timely and
6 proper request to opt-out will automatically receive a payment of their Individual Class Payment. This
7 notice program was designed to meaningfully reach the Class Members and it advises them of all
8 pertinent information concerning the Settlement. Decl. Nordrehaug at ¶32. The mailing and
9 distribution of the Class Notice satisfies the requirements of due process and is the best notice
10 practicable under the circumstances and complies with Rules of Court 3.766 and 3.769(f).

11
12 **VII. CONCLUSION**

13 Plaintiffs respectfully request that the Court preliminarily approve the proposed settlement and
14 sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the final
15 approval hearing for the proposed date of June 26, 2024, which date is at least one hundred twenty
16 (120) days from the date of Preliminary Approval.

17 Dated: January 24, 2023

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

18 By: /s/ Kyle Nordrehaug
19 Kyle R. Nordrehaug, Esq.
20 Attorney for Plaintiff
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