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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **IN AND FOR THE COUNTY OF SAN DIEGO**

13 Coordination Proceeding Special Title
14 (Rule 3.550)

15 **SOLARCITY WAGE AND HOUR CASES**

16 Coordinated actions:

17 *Irving v. SolarCity Corp.*,
18 San Mateo County Superior Court,
Case No. CIV 525975

19 *Thomas v. SolarCity Corp.*,
20 San Diego County Superior Court,
Case No. 37-2017-00018317

JUDICIAL COUNCIL COORDINATION
PROCEEDING CASE NO. **JCCP 4945**

(Included actions: Case No. CIV 525975 and
Case No. 37-2017-00018317)

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

Hearing Date: September 13, 2018

Hearing Time: 10:00 a.m.

[Hearing Scheduled by the Court]

Judge: Hon. Marie S. Weiner
Dept: 2

Action Filed: December 24, 2013

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TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	DESCRIPTION OF THE SETTLEMENT	2
III.	CASE BACKGROUND	4
IV.	THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO GRANT PRELIMINARY APPROVAL	7
A.	The Role Of The Court In Preliminary Approval Of A Class Action Settlement	8
B.	Factors To Be Considered In Granting Preliminarily Approval	9
1.	The Settlement is the Product of Serious, Informed and Noncollusive Negotiations	10
2.	The Settlement Has No "Obvious Deficiencies" and Falls Within the Range for Approval	12
3.	The Settlement Does Not Improperly Grant Preferential Treatment To Class Representatives or Segments Of The Class	14
4.	The Stage Of The Proceedings Are Sufficiently Advanced To Permit Preliminary Approval Of The Settlement	15
V.	THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES	16
VI.	THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE	19
VII.	CONCLUSION	20

TABLE OF AUTHORITIES

<u>Cases:</u>	<u>Page:</u>
<i>Boggs v. Divested Atomic Corp.</i> , 141 F.R.D. 58 (S.D. Ohio 1991)	19
<i>Bowles v. Superior Court</i> , 44 Cal.2d 574 (1955)	17
<i>Boyd v. Bechtel Corp.</i> , 485 F.Supp. 610 (N.D. Cal. 1979)	9
<i>Brinker v. Superior Court</i> , 53 Cal. 4th 1004 (2012)	13
<i>Dunk v. Ford Motor Co.</i> , 48 Cal.App.4th 1794 (1996)	7, 8
<i>Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)</i> , 213 F.3d 454 (9 th Cir. 2000)	13, 14, 16
<i>Duran v. U.S. Bank National Assn.</i> , 59 Cal. 4th 1 (2014)	14
<i>Frazier v. City of Richmond</i> , 184 Cal.App.3d 1491 (1986)	8
<i>Gautreaux v. Pierce</i> , 690 F.2d 616 (7th Cir. 1982)	8
<i>Ghazaryan v. Diva Limousine, Ltd.</i> , 169 Cal. App. 4th 1524 (2008)	17
<i>Glass v. UBS Fin. Servs.</i> , 2007 U.S. Dist. LEXIS 8476 (N.D.Cal. January 27, 2007)	13-16
<i>Green v. Obledo</i> , 29 Cal.3d 126 (1981)	8
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9 th Cir. 1998)	13, 18
<i>Holman v. Experian Info. Solutions, Inc.</i> , 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014)	14
<i>In re Wash. Public Power Supply System Sec. Litig.</i> , 720 F. Supp. 1379 (D. Ariz. 1989)	9, 12
<i>Kirkorian v. Borelli</i> , 695 F. Supp. 446 (N.D. Cal. 1988)	9
<i>Linder v. Thrifty Oil Co.</i> , 23 Cal. 4th 429 (2003)	17

1	<i>Louie v. Kaiser Foundation Health Plan, Inc.,</i>	15
2	2008 WL 4473183 (S.D.Cal. Oct. 06, 2008)	
3	<i>Lyons v. Marrud, Inc.,</i>	9
4	[1972-1973 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 93,525 (S.D.N.Y. 1972)	
5	<i>Mathein v. Pier 1 Imps. (U.S.), Inc.,</i>	14
6	2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018)	
7	<i>Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.,</i>	9
8	221 F.R.D. 523 (C.D. Cal. 2004)	
9	<i>Officers for Justice v. Civil Service Com'n, etc.,</i>	9
10	688 F.2d 615 (9th Cir. 1982)	
11	<i>Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.,</i>	8
12	323 F. Supp. 364, 372 (E.D. Pa. 1970)	
13	<i>Rausch v. Hartford Fin. Servs. Grp.,</i>	14
14	2007 U.S. Dist. LEXIS 14740, 2007 WL 671334 (D. Or. 2007)	
15	<i>Rose v. City of Hayward,</i>	17
16	126 Cal.App.3d 926 (1981)	
17	<i>Sav-On Druq Stores, Inc. v. Superior Court,</i>	17, 19
18	34 Cal. 4th 319 (2004)	
19	<i>Stovall-Gusman v. W.W. Granger, Inc.,</i>	13
20	2015 U.S. Dist. LEXIS 78671 (N.D. Cal. 2015)	
21	<i>In re Tableware Antitrust Litig.,</i>	9
22	484 F.Supp. 2d 1078 (N.D. Cal. 2007)	
23	<i>Tate v. Weyerhaeuser Co.,</i>	18
24	723 F.2d 598 (8th Cir. 1983)	
25	<i>Valentino v. Carter-Wallace, Inc.,</i>	19
26	97 F.3d 1227 (9th Cir. 1996)	
27	<i>Vasquez v. Superior Court,</i>	8
28	4 Cal.3d 800 (1971)	
	<i>Weinberger v. Kendrick,</i>	9
	698 F.2d 61 (2d Cir. 1982), cert. denied 464 U.S. 818 (1983)	
	<i>Wershba v. Apple Computer, Inc.,</i>	8
	91 Cal.App.4th 224 (2001)	
	<u>Statutes, Rules and Regulations:</u>	
	California Code of Civil Procedure §382	6, 16
	California Code of Civil Procedure §384	3

1	California Labor Code §2699	4
2	California Rules of Court, rule 3.766	19
3	California Rules of Court, rule 3.769	8, 20
4		
5	<u>Secondary Sources:</u>	
6	2 H. Newberg & A. Conte, <i>Newberg on Class Actions</i> (3d ed. 1992)	7, 8, 17
7	<i>Manual For Complex Litigation</i> , (Second), §30.44, 41.43 (1993)	8
8	3B J. Moore, <i>Moore's Federal Practice</i> §§23.80 - 23.85 (2003)	8
9		
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13		
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1 **I. INTRODUCTION**

2 Anita Irving, Les Thomas, Breana Daugherty, Jason Wool, and Felicia Kim (collectively,
3 "Plaintiffs") respectfully submit this memorandum in support of the motion for preliminary approval
4 of the proposed class action settlement with Defendant SolarCity Corporation ("Defendant"), and seek
5 entry of an order: (1) preliminarily approving the proposed settlement of this class action with
6 Defendant; (2) approving the form and method for providing class-wide notice; (3) directing that notice
7 of the proposed settlement be given to the class; and, (4) scheduling a final approval hearing date to
8 consider Plaintiffs' request for final approval of the proposed settlement and Plaintiffs' application for
9 attorneys' fees and expenses.

10 Plaintiffs and Defendant have reached a full settlement of the above-captioned action, which
11 is embodied in the Joint Stipulation of Class Action Settlement and Release ("Stipulation" or
12 "Settlement") filed concurrently with the Court. A copy of the fully executed Stipulation is attached
13 as Exhibit #1 to the Declaration of Norman Blumenthal ("Decl. Blumenthal"), served and filed
14 herewith. This Settlement resolves the entire coordinated action.¹

15 As consideration for this Settlement, the total amount to be paid by Defendant is One Million
16 Seven Hundred Eighty Thousand U.S. Dollars (\$1,780,000.00) (the "Gross Settlement Amount"). This
17 Gross Settlement Amount will settle all issues pending in the litigation between the Plaintiffs and the
18 Class, on the one hand, and the Defendant, on the other hand, including: all Settlement Payments to
19 Settlement Class Members, the Service Enhancement Payments to the Class Representatives, the
20 employer's share of payroll taxes, Class Counsel's Attorneys' Fees, Litigation Expenses, Claims
21 Administration Costs, and the PAGA Penalty Payment. The Settlement is all-in with no reversion to
22 Defendant. Decl. Blumenthal at ¶3.

23 On December 12, 2017, the parties participated in a full day of mediation before Michael
24 Dickstein, a respected and experienced mediator of class actions and wage and hour lawsuits, but were
25

26 ¹ For settlement purposes, the Parties will be adding Breanna Daugherty, Jason Wool and Felicia
27 Kim as a Plaintiffs in the *Irving* Action through a stipulated amendment, and the related action *Breana*
28 *Daugherty v. SolarCity Corporation*, Case No. 17-cv-15363, in the Northern District of California, has
 been dismissed without prejudice.

1 unable to reach an agreement. After the mediation, Mr. Dickstein continued to assist the parties with
2 negotiations, and finally, in May 2017, Mr. Dickstein made a mediator's proposal which was not
3 subject to further negotiation. Based upon the expertise of the Mediator and the uncertainties of
4 litigation, all parties agreed to accept the mediator's proposal. The basic terms were set forth in a
5 signed Memorandum of Understanding. The parties then prepared the full Stipulation which was
6 signed by all counsel and by the parties and is now presented to this Court for preliminary approval.
7 Decl. Blumenthal at ¶5.

8 The Settlement is fair, reasonable, and adequate, and should be preliminarily approved.
9 Therefore, Plaintiffs respectfully request that this Court grant preliminary approval of the Stipulation
10 and enter the proposed order submitted herewith.

11 **II. DESCRIPTION OF THE SETTLEMENT**

12 The Gross Settlement Amount to be paid by Defendant is One Million Seven Hundred Eighty
13 Thousand U.S. Dollars (\$1,780,000.00). (Stipulation at ¶ 3.15.) Under the terms of the Settlement,
14 the Gross Settlement Amount consists of the following elements: (1) payments to Settlement Class
15 Members; (2) Class Counsel's attorneys' fees and costs (subject to Court approval); (3) Claims
16 Administration Costs; (4) the Service Enhancement Payments to the Class Representatives (subject to
17 Court approval); (5) the PAGA Penalty Payment, and (6) the employer's share of payroll taxes on the
18 portion of the Settlement allocated to wages. (Stipulation at ¶ 3.15.) The Gross Settlement Amount
19 shall be all-in with no reversion to Defendant and Class Members will be automatically paid their
20 settlement shares without submitting a claim form. (Stipulation at ¶ 8.) Decl. Blumenthal at ¶15.

21 Defendant will pay the Gross Settlement Amount to the Claims Administrator no later than
22 seventy (70) days after the Effective Date has passed. (Stipulation at ¶ 12.3.) The Effective Date is
23 the date on which the Court's Approval Order becomes "final" which is when the last to occur of the
24 following: (a) the date of final affirmance on appeal of the Judgment; (b) the date of final dismissal of
25 any appeal from the Judgment or the final dismissal of any proceeding to review the Judgment; or (c)
26 if no appeal is filed, the expiration date of the time for the filing or noticing of any appeal from the
27 Court's Judgment, (Stipulation at ¶ 3.14.) The Settlement Payments to the Settlement Class and the
28 PAGA Penalty Payment to the LWDA will be paid by the Claims Administrator no later than 85 days

1 after the Effective Date. (Stipulation at ¶ 12.4.) Decl. Blumenthal at ¶16.

2 The Net Settlement Amount shall equal the Gross Settlement Amount minus the Court-approved
3 amounts for the Attorneys' Fees, Litigation Expenses, Claims Administration Costs, the PAGA Penalty
4 Payment, the employer's share of payroll taxes, and the Service Enhancement Payments to the Class
5 Representatives. (Stipulation at ¶ 3.23.) The Claims Administrator will automatically make Settlement
6 Payments to each Settlement Class Member (i.e. those Class Members who do not request exclusion)
7 without the need for a claim form. (Stipulation at ¶ 12.1.) The Net Settlement Amount shall be
8 allocated as follows: Each individual Settlement Class Member's payment shall be calculated by
9 counting the number of Work Weeks all Settlement Class Members worked during the Class Period
10 (which becomes the denominator) and the number of work weeks each of these employees worked
11 during the Class Period (which becomes the numerator) and multiply this fraction by the Net Settlement
12 Fund amount allocated to the Class. (Stipulation at ¶ 8.4.) The entire Net Settlement Amount will be
13 allocated among the Participating Class Members. Decl. Blumenthal at ¶17.

14 Class Members may request exclusion of the Settlement by submitting a Request for Exclusion
15 within 45 days from the date the Notice is mailed (the "Opt-Out/Object Deadline"). (Stipulation at ¶
16 11.1.) Class Members who do not request exclusion will be deemed Settlement Class Members, will
17 be bound by the Settlement, and will be entitled to receive a Settlement Payment. (Stipulation at ¶
18 3.38.) Class Members shall have forty-five (45) days from the date of mailing of the Class Notice to
19 return valid Dispute Forms (the "Notice Period Deadline") to the Claims Administrator. (Stipulation
20 at ¶ 11.2.) Finally, the Notice shall advise Class members of their right to object to the Settlement.
21 (Stipulation at ¶ 11.1.) Decl. Blumenthal at ¶18.

22 This is a non-reversionary settlement and it is the intention of the Parties that the entire Gross
23 Settlement Amount will be paid out as described herein, leaving no residue. Any checks issued to
24 Settlement Class Members shall remain negotiable for a period of one hundred eighty (180) days from
25 the date of mailing. The funds associated with any checks which are not timely negotiated shall be paid
26 in favor of a *cy pres* beneficiary, and the other entities consistent with California Code of Civil
27 Procedure section 384. (Stipulation at ¶ 12.6.) Decl. Blumenthal at ¶19.

28 The parties have agreed to use KCC Class Action Services as the Claims Administrator for the

1 Settlement. (Stipulation at ¶ 10.1.) The Claims Administration Costs are the fees and expenses
2 reasonably and necessarily incurred by the Claims Administrator as a result of performing the
3 settlement administration procedures and functions expressly required in the Stipulation, which shall
4 be paid from the Gross Settlement Amount. (Stipulation at ¶ 3.5.) Claims Administration Costs and
5 expenses are estimated not to exceed \$40,000. (Stipulation at ¶ 3.5.) Decl. Blumenthal at ¶20.

6 Subject to Court approval, Class Counsel shall seek (a) an award of Attorneys' Fees of no more
7 than one-third (1/3) of the Gross Settlement Amount (\$593,333.00); and (b) an award of actual
8 Litigation Expenses billed to Plaintiffs as per Class Counsel's billing statement in an amount not to
9 exceed \$55,000. (Stipulation at ¶ 9.1.) Subject to Court approval, the Settlement provides for Service
10 Enhancement Payments of up to Twenty-Five Thousand Dollars (\$25,000) for Plaintiff Irving and Ten
11 Thousand U.S. Dollar (\$10,000.00) for the other Class Representatives except Thomas. (Stipulation
12 at ¶ 8.5.) Defendant will not oppose a motion for approval of attorneys' fees, costs and the service
13 payments consistent with the Stipulation. Decl. Blumenthal at ¶21.

14 The Parties will seek approval from the Court for a PAGA Penalty Payment of \$25,000.
15 Pursuant to the express requirements of Labor Code § 2699(i), the PAGA Penalty Payment shall be
16 allocated as follows: \$18,750.00 (75%) to the LWDA for the enforcement of labor laws and education
17 of employers, and \$6,250.00 (25%) to the Settlement Class Members on a pro rata basis. (Stipulation
18 at ¶ 8.3.) Decl. Blumenthal at ¶22.

19 **III. CASE BACKGROUND**

20 On December 24, 2013, Anita Irving on behalf of herself and putative class members, filed a
21 lawsuit against SolarCity in San Mateo Superior Court, entitled *Irving v. SolarCity Corp.*, Case No.
22 CIV 525975. In it, she alleged violations of the California Labor Code, Unfair Competition Law, and
23 Private Attorneys General Act (see "Alleged Claims," Section 3.1 above). SolarCity moved to compel
24 arbitration, and on December 16, 2014, the Court granted the request with respect to Plaintiff's
25 individual claims and denied it with respect to the Private Attorneys General Act ("PAGA") claims.
26 The Court of Appeal affirmed the Court's ruling on November 29, 2016. The petition for review was
27 denied on March 6, 2017, and the remittitur back to this Court was issued. Decl. Blumenthal at ¶7.

28 The Lawsuit entitled *Thomas v. SolarCity Corp.*, Case No. 37-2017-00018317, was filed in San

1 Diego County Superior Court on May 19, 2017 and involved wage and hour claims similar to those in
2 Irving. Irving and Thomas were judicially coordinated as Case No. JCCP 4945. On January 9, 2018,
3 the coordinated cases, referred to as the *SolarCity Wage and Hour Cases*, were assigned to the
4 Honorable Marie Weiner. Decl. Blumenthal at ¶8.

5 On July 26, 2017, Jason Wool and Felicia Kim each filed class, representative, and individual
6 claims in the United States District Court for the Southern District of California, alleging violations of
7 the California Labor Code, Unfair Competition Law, Private Attorneys General Act, and the Fair Labor
8 Standards Act based on their employment for SolarCity in commissioned salesperson positions that
9 SolarCity considered exempt ("exempt claims") as well as positions that SolarCity considered
10 non-exempt ("non-exempt claims"). Their non-exempt claims were substantially similar to the claims
11 brought in *Thomas* and *Irving*. Wool and Kim each settled their exempt claims against SolarCity on an
12 individual basis, and such claims were dismissed from the federal case with prejudice on March 29,
13 2018. SolarCity agreed that Wool and Kim could bring their non-exempt claims in the Lawsuits and
14 that they could be added to the Lawsuits as named plaintiffs and proposed class representatives.
15 Accordingly, Wool and Kim's non-exempt claims were dismissed from the federal case without
16 prejudice on March 29, 2018. Plaintiff Daugherty has dismissed without prejudice the matter pending
17 in the United States District Court for the Northern District of California entitled *Daugherty v.*
18 *SolarCity Corporation*, Case No. 16-CV-05155 WHA. Daugherty, together with Kim and Wool, will
19 be added to the Lawsuits as named plaintiffs and proposed class representatives in conjunction with the
20 motion for preliminary approval. Decl. Blumenthal at ¶9.

21 The Parties engaged in investigation and the exchange of documents and information in
22 connection with the Lawsuits. In both of the Lawsuits, the Plaintiffs and Defendant have conducted
23 formal discovery and have exchanged detailed information and data concerning the claims, defenses,
24 and alleged damages at issue in the Lawsuits. Defendant's PMK was deposed and approximately 2,000
25 pages of documents were produced. Decl. Blumenthal at ¶10.

26 The Lawsuits generally allege that Plaintiffs and other commissioned salesperson employees
27 were not properly compensated in accordance with California law. The Lawsuits allege violations of
28 of the California Labor Code, Unfair Competition Law, and Private Attorneys General Act. Decl.

1 Blumenthal at ¶11.

2 Prior to settlement negotiations, Defendant provided Plaintiffs with the necessary payroll and
3 other data for the Class in order to evaluate the claims. Plaintiffs analyzed the data, prepared a damage
4 valuation and prepared a detailed analysis. Plaintiffs employed DM&A, a damage expert, to prepare
5 a comprehensive valuation. The Parties engaged in mediation on December 12, 2017 with Michael
6 Dickstein, a respected and experienced mediator of wage and hour class action lawsuits. After a full
7 day of mediation, the parties were unable to reach a settlement. With the assistance of Mr. Dickstein,
8 the negotiations continued until a mediator's proposal was made in on May 4, 2018. Based on those
9 negotiations and arms-length settlement discussions between the parties, all parties agreed to accept
10 the mediator's proposal. The basic terms were set forth in a signed memorandum of understanding.
11 The parties then prepared the formal Stipulation, which was executed and is now presented to this Court
12 for preliminary approval. Decl. Blumenthal at ¶12.

13 Accordingly, for purposes of this Settlement, the "Class" is defined as "all individuals who
14 worked for SolarCity in California as a commissioned salesperson who were classified as non-exempt
15 from December 24, 2009 to the date of filing of the motion for preliminary approval (the "Class
16 Period"). (Stipulation at ¶ 3.6.) The Class Period is from December 24, 2009 to the date of the filing
17 of this motion. (Stipulation at ¶ 3.8.) The Class consists of 4,7283 Class Members who collectively
18 worked 115,263 weeks in the Class Period as Class Members. (Stipulation at ¶ 8.4.)

19 Although a settlement has been reached, Defendant specifically and generally denies any and
20 all liability or wrongdoing of any sort with regard to any of the Alleged Claims, makes no concessions
21 or admissions of liability of any sort. Defendant maintains that for any purpose other than settlement,
22 the Lawsuits are not appropriate for class action treatment pursuant to California Code of Civil
23 Procedure § 382, and that had this matter proceeded, Defendant would have continued to oppose class
24 certification pursuant to California Code of Civil Procedure § 382. Nonetheless, Defendant has
25 concluded that further litigation would be protracted, distracting, and expensive, and that it is desirable
26 that the Lawsuits be fully and finally settled in the manner and upon the terms and conditions set forth
27 in this Stipulation. Decl. Blumenthal, ¶ 13.

28 Plaintiffs contend that Defendant violated California wage and hour laws. Plaintiffs further

1 contend that the Lawsuits are appropriate for class certification on the basis that the Plaintiffs' claims
2 meet the requisites for class certification. Without admitting that class certification is proper,
3 Defendant has stipulated that the above Class may be certified for settlement purposes only. The
4 Parties agree that certification for settlement purposes is not an admission that class certification would
5 be proper if the class certification issue were litigated. Further, the Stipulation is not admissible in this
6 or any other proceeding as evidence that the Class could be certified absent a settlement. Solely for
7 purposes of settling the Lawsuits, the Parties stipulate and agree that the requisites for establishing class
8 certification with respect to the Class, as defined above, are satisfied. Decl. Blumenthal ¶ 13.

9 Class Counsel has conducted a thorough investigation into the facts of the class action. Class
10 Counsel has diligently evaluated the Class Members' claims against Defendant. Prior to the settlement
11 negotiations, Plaintiffs performed significant discovery and counsel for Defendant provided Class
12 Counsel data and information for the Class, including payroll data and information concerning the
13 Defendant's practices. In addition, Class Counsel previously negotiated settlements with other
14 defendants in actions involving nearly identical issues and analogous defenses. Based on the foregoing
15 data and their own independent investigation, evaluation and experience, Class Counsel believes that
16 the settlement with Defendant on the terms set forth in the Stipulation is fair, reasonable, and adequate
17 and is in the best interest of the Class in light of all known facts and circumstances, including the risk
18 of significant delay, defenses asserted by Defendant, and potential appellate issues. Decl. Blumenthal
19 at ¶ 14; Declaration of Shaun Setareh at ¶4.

20 **IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO** 21 **GRANT PRELIMINARY APPROVAL**

22 When a proposed class-wide settlement is reached, the settlement must be submitted to the court
23 for approval. 2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) at §11.41, p.11-87.
24 Preliminary approval is the first of three steps that comprise the approval procedure for settlements of
25 class actions. The second step is the dissemination of notice of the settlement to all Class Members.
26 The third step is a final settlement approval hearing, at which evidence and argument concerning the
27 fairness, adequacy, and reasonableness of the settlement may be presented and Class Members may be
28 heard regarding the settlement. See *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996);

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

2 The primary question presented on an application for preliminary approval of a proposed class
3 action settlement is whether the proposed settlement is “within the range of possible approval.”
4 *Manual for Complex Litigation, Second* §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th
5 Cir. 1982).² Preliminary approval is merely the prerequisite to giving notice so that “the proposed
6 settlement... may be submitted to members of the prospective Class for their acceptance or rejection.”
7 *Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.*, 323 F. Supp. 364,
8 372 (E.D. Pa. 1970). There is an initial presumption of fairness when a proposed settlement, which was
9 negotiated at arm's length by counsel for the Class, is presented for court approval. *Newberg*, 3d Ed.,
10 §11.41, p.11-88. However, the ultimate question of whether the proposed settlement is fair, reasonable,
11 and adequate is made after notice of the settlement is given to the Class Members and a final settlement
12 hearing is held by the Court.

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

14 The approval of a proposed settlement of a class action suit is a matter within the broad
15 discretion of the trial court. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 234-235 (2001);
16 *Dunk v. Ford Motor Co.* 48 Cal.App.4th 1794 (1996). Preliminary approval does not require the trial
17 court to answer the ultimate question of whether a proposed settlement is fair, reasonable, and adequate.
18 That final determination is made only after notice of the settlement has been given to the class members
19 and after they have been given an opportunity to voice their views of the settlement or to be excluded
20 from the settlement. 3B J. Moore, *Moore's Federal Practice* §§23.80 - 23.85 (2003).

21 In considering a potential settlement for preliminary approval purposes, the trial court does not
22 have to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the
23 dispute, and need not engage in a trial on the merits. *Wershba, supra*, 91 Cal.App.4th at 239-40; *Dunk*,
24 *supra*, 48 Cal.App. 4th at 1807. The Ninth Circuit explains, “the very essence of a settlement is

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 compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” *Officers for Justice v.*
2 *Civil Service Com’n of City and County of S.F.*, 688 F.2d 615, 624 (9th Cir. 1982). The question
3 whether a proposed settlement is fair, reasonable, and adequate necessarily requires a judgment and
4 evaluation by the attorneys for the parties based upon a comparison of “‘the terms of the compromise
5 with the likely rewards of litigation.’” *Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir. 1982), cert.
6 denied 464 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry,*
7 *Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)). Thus, when analyzing the settlement, the amount is
8 “not to be judged against a hypothetical or speculative measure of what might have been achieved by
9 the negotiators.” *Officers for Justice*, 688 F.2d at 625, 628.

10 With regard to class action settlements, the opinions of counsel should be given considerable
11 weight both because of counsel’s familiarity with this litigation and previous experience with cases
12 such as these. *Officers for Justice*, 688 F.2d 615, 625 (9th Cir. 1982); *In re Wash. Public Power Supply*
13 *System Sec. Litig.*, 720 F. Supp. 1379, 1392 (D. Ariz. 1989); *Kirkorian v. Borelli*, 695 F. Supp. 446, 451
14 (N.D. Cal. 1988); *Weinberger*, 698 F.2d at 74. For example, in *Lyons v. Marrud, Inc.*, [1972-1973
15 Transfer Binder] Fed. Sec. L. Rep. (CCH) Paragraph 93,525 (S.D.N.Y. 1972), the court noted that
16 “[e]xperienced and competent counsel have assessed these problems and the probability of success on
17 the merits.... The parties’ decision regarding the respective merits of their position has an important
18 bearing.” *Id.* at ¶ 92,520. “The recommendations of plaintiffs’ counsel should be given a presumption
19 of reasonableness.” *Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 622 (N.D. Cal. 1979). As a result, courts
20 hold that the recommendation of counsel is entitled to significant weight. *Nat’l Rural Telecomms.*
21 *Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004).

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

23 A number of factors are to be considered in evaluating a settlement for purposes of preliminary
24 approval. In determining whether to grant preliminary approval, the court considers whether the "(1)
25 the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, (2)
26 has no obvious deficiencies, (3) does not improperly grant preferential treatment to class representatives
27 or segments of the class, and (4) falls within the range of possible approval." *In re Tableware Antitrust*
28 *Litig.*, 484 F.Supp. 2d 1078, 1079 (N.D. Cal. 2007). No one factor should be determinative, but rather

1 all factors should be considered. The analysis has been summarized as follows:

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

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

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

10 **1. The Settlement is the Product of Serious, Informed and**
11 **Noncollusive Negotiations**

12 This settlement is the result of extensive and hard-fought litigation and negotiations before an
13 experienced mediator. Defendant has expressly denied and continues to deny any wrongdoing or legal
14 liability arising out of the conduct alleged in the Lawsuits. Plaintiffs and Class Counsel have
15 determined that it is desirable and beneficial to the Class Members to put to rest the Released Claims.³

16 The Parties scheduled a private mediation to take place before Michael Dickstein, a respected
17 and experienced mediator of class actions and wage and hour lawsuits. In preparation for the
18 mediation, Defendant provided Class Counsel with necessary records and information for the members
19 of the Class. Plaintiffs analyzed the data with the assistance of damages expert DM&A and prepared
20 and submitted a mediation brief to Mediator Dickstein. After a full day of settlement negotiations, the
21 parties were unable to reach an agreement. Through continued negotiations, the parties reached an
22 agreement, based upon a mediator's proposal by Mediator Dickstein which was accepted in light of the
23 uncertainties of protracted litigation. As a result, the parties signed a Memorandum of Understanding,

24 ³ "Upon the Effective Date, each of the Settlement Class Members, on behalf of themselves, and
25 each of their heirs, representatives, successors, assigns, and attorneys, shall be deemed to have, and by
26 operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged
27 the Released Parties from the Alleged Claims, all claims that could have been alleged based upon the
28 factual allegations in the Lawsuits, and any premiums, penalties, interest, punitive damages, costs,
attorneys' fees, injunctive relief, declaratory relief, or accounting based on the Alleged Claims which
occurred during the Class Period for only those workweeks when the Class Member was classified as
non-exempt (the "Released Claims"). The Released Claims expressly exclude all other claims including
but not limited to claims for wrongful termination, retaliation, discrimination, unemployment insurance,
disability, workers' compensation and claims outside the Class Period which are not released."
(Stipulation at ¶ 13.1.)

1 and the final settlement terms were then negotiated and set forth in the Stipulation now presented for
2 this Court's approval. Decl. Blumenthal ¶5. Plaintiffs and Class Counsel believe that this Settlement
3 is fair, reasonable, and adequate.

4 As consideration for this Settlement, the total amount to be paid by Defendant is One Million
5 Seven Hundred Eighty Thousand Dollars (\$1,780,000.00) (the "Gross Settlement Amount"). This
6 Gross Settlement Amount will settle all issues pending in the litigation between the Plaintiffs and the
7 Class, on the one hand, and the Defendant, on the other hand, including: all Settlement Payments to
8 Settlement Class Members, the Service Enhancement Payments to the Class Representatives, the
9 employer's share of payroll taxes, Class Counsel's Attorneys' Fees, Litigation Expenses, Claims
10 Administration Costs, and the PAGA Penalty Payment. The Settlement is all-in with no reversion to
11 Defendant. Decl. Blumenthal at ¶3.

12 Class Counsel has conducted a thorough investigation into the facts of the class action. Class
13 Counsel has diligently evaluated the Class Members' claims against Defendant. Prior to the settlement
14 negotiations, Plaintiffs performed significant discovery and counsel for Defendant provided Class
15 Counsel data and information for the Class, including payroll data and information concerning the
16 Defendant's practices. In addition, Class Counsel previously negotiated settlements with other
17 defendants in actions involving nearly identical issues and analogous defenses. Based on the foregoing
18 data and their own independent investigation, evaluation and experience, Class Counsel believes that
19 the settlement with Defendant on the terms set forth in the Stipulation is fair, reasonable, and adequate
20 and is in the best interest of the Class in light of all known facts and circumstances, including the risk
21 of significant delay, defenses asserted by Defendant, and potential appellate issues. Decl. Blumenthal
22 at ¶ 14; Declaration of Shaun Setareh at ¶4.

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

1 best interest of the Class Members. Decl. Blumenthal, ¶ 23.

2 Here, there can be no dispute that the litigation has been hard-fought with aggressive and
3 capable advocacy on both sides. The Parties were represented by experienced and capable counsel who
4 zealously advocated their respective positions with the assistance of an experienced mediator.
5 Accordingly, “[t]here is likewise every reason to conclude that settlement negotiations were vigorously
6 conducted at arms’ length and without any suggestion of undue influence.” *In re Wash. Public Power*,
7 720 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 if they do not opt out. (Stipulation at ¶ 8.4.)

13 The calculations to compensate for the amount due for the nonpayment of wages at the time this
14 Settlement was negotiated were calculated by DM&A, Plaintiffs’ damage expert. For the employees
15 whose claims are at issue in the Action, Plaintiffs used DM&A to analyze the data and determine the
16 potential unpaid wages for the employees. For the Class, Plaintiffs determined that Defendant was
17 subject to maximum liability for damages in the amount of \$6,550,259, consisting of \$493,837 for
18 unpaid wages resulting from the regular rate violations, \$3,747,532 for meal period damages, and
19 \$2,308,890 for unpaid off the clock wages. Decl. Blumenthal, ¶6.

20 Consequently, the settlement of \$1,780,000.00 represents more than 27% of the value of the
21 maximum damages at issue, assuming all of these amounts could be proven at trial. However, during
22 mediation, Plaintiffs learned that these estimates were inflated. For example, an analysis of the push
23 button data revealed that meal period violations could be as low as 1.6% of the total workdays, which
24 is significantly lower than the 42% violation rate used in the above expert valuation. Further, with
25 respect to the off-the-clock work valuation, Plaintiffs used 1 hour of unpaid work per week in the
26 valuation, however, Defendant argued that any off-the-clock work was far lower on average. Given
27 the amount of the settlement as compared to the potential value of claims in this case, the settlement
28 is fair and reasonable. Clearly, the goal of this litigation to provide compensation to class members for

1 unpaid time and for meal breaks allegedly missed has been met. Decl. Blumenthal, ¶6.

2 In *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) the federal district
3 court for the Northern District of California approved a settlement of an action claiming unpaid wages
4 where the settlement amount constituted approximately 25% of the estimated actual damages to the
5 class. Here, the settlement consideration exceeds the percentage approved in *Glass*. In *Glass*, the
6 federal court ruled that the settlement which represented approximately 25% of the estimated loss to
7 the class was fair, reasonable, and adequate. *Id.* at 28.⁴ As a result, this settlement compares favorably
8 to the percentage approved in *Glass* is entitled to preliminary approval.

9 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
10 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
11 Defendant presented serious threats to the claims of the Plaintiffs and the other Class Members.
12 Defendant asserted that the employment practices complied with all applicable Labor laws. Defendant
13 argued that employees were required to accurately record their time and a push-button was included
14 in the time card procedure where employees could record missed meal periods or voluntarily waive the
15 break. Defendant could also argue that the Supreme Court decision in *Brinker v. Superior Court*, 53
16 Cal. 4th 1004 (2012), weakened Plaintiffs' claims, on liability, value, and class certifiability as to the
17 meal period claim. If successful, Defendant's defenses could eliminate or substantially reduce any
18 recovery to the Class. While Plaintiffs believe that these defenses could be overcome, Defendant
19 maintains these defenses have merit and therefore present a serious risk to recovery for the Class. Decl.
20 Blumenthal, ¶ 24.

21 There was also a significant risk that, if the Lawsuits were not settled, Plaintiffs would be unable
22 to obtain class certification and thereby not recover on behalf of any employee other than themselves.
23 Defendant argued that the individual experience of each employee varied with respect to the alleged
24 claim. While other cases have approved class certification of wage and hour claims, class certification
25

26 ⁴ See also *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)
27 approving settlement which represented "roughly one-sixth of the potential recovery"); *Stovall-Gusman*
28 *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.")

1 in this action would have been hotly disputed and was by no means a foregone conclusion. Finally,
2 even if class certification was successful, as demonstrated by the California Supreme Court decision
3 in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles to overcome
4 for a class-wide recovery even where the class has been certified. Decl. Blumenthal, ¶ 25.

5 After arm's-length negotiations between experienced and informed counsel, the parties
6 recognized the potential risks and agreed on the settlement of \$1,780,000. As the federal court recently
7 held in *Glass*, where the parties faced uncertainties similar to those here:

8 In light of the above-referenced uncertainty in the law, the risk, expense, complexity,
9 and likely duration of further litigation likewise favors the settlement. Regardless of
10 how this Court might have ruled on the merits of the legal issues, the losing party likely
11 would have appealed, and the parties would have faced the expense and uncertainty of
12 litigating an appeal. "The expense and possible duration of the litigation should be
13 considered in evaluating the reasonableness of [a] settlement." See *In re Mego*
14 *Financial Corp. Securities Litigation*, 213 F.3d 454, 458 (9th Cir. 2000).

15 Here, the risk of further litigation is substantial.

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

18 The relief provided in the settlement will benefit all members of the Class. The settlement does
19 not grant preferential treatment to Plaintiffs or segments of the Class in any way. Payments to the Class
20 Members are all determined under a neutral methodology. All Class Members will receive the same
21 opportunity to participate in and receive payment through a neutral formula that is based upon the
22 weeks worked for that individual. Decl. Blumenthal, ¶4.

23 Plaintiffs will apply to the Court for a service payment in consideration for their service and for
24 the risks undertaken on behalf of the Class. (Stipulation at ¶ 8.5.) Plaintiffs performed their duties
25 admirably by working with Class Counsel. Decl. Blumenthal at ¶27. At this stage, the requested
26 Plaintiffs' service payment is within the accepted range of awards for purposes of preliminary approval.
27 See e.g. *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding
28 \$12,500 where average class member payment was \$351); *Holman v. Experian Info. Solutions, Inc.*,
2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014) (approving \$10,000 service award where class
member recovery was \$375); *Rausch v. Hartford Fin. Servs. Grp.*, 2007 U.S. Dist. LEXIS 14740, 2007
WL 671334 (D. Or. 2007) (approving award of \$10,000 where class member recoveries were as little

1 as \$150); *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D.Cal. Oct. 06,
2 2008) (awarding \$25,000 service award to each of six plaintiffs in overtime class action); *Glass v. UBS*
3 *Fin. Servs.*, 2007 WL 221862, *16-17 (N.D.Cal. Jan. 27 2007) (awarding \$25,000 service award in
4 overtime class action and a pool of \$100,000.00 in enhancements). As explained in *Glass*, service
5 awards are routinely awarded to class representatives to compensate the employees for the time and
6 effort expended on the case, for the risk of litigation, for the fear of suing an employer and retaliation
7 there from, and to serve as an incentive to vindicate the statutory rights of all employees. 2007 WL
8 221862 at *16-17.

9 **4. The Stage Of The Proceedings Are Sufficiently Advanced To Permit Preliminary**
10 **Approval Of The Settlement**

11 The stage of the proceedings at which this settlement was reached also militates in favor of
12 preliminary approval and ultimately, final approval of the settlement. Class Counsel has conducted a
13 thorough investigation into the facts of the class action. Class Counsel began investigating the Class
14 Members' claims before this action was filed. Class Counsel performed significant review and analysis
15 of Defendant's documents through both formal and informal discovery. The Deposition of Irving and
16 of the Defendant were taken. Class Counsel engaged in a thorough research and analysis of the relevant
17 claims and data with the assistance of an expert. Class Counsel was also experienced with the claims
18 at issue here, as Class Counsel previously litigated and settled similar claims in numerous other actions.
19 Accordingly, the agreement to settle did not occur until Class Counsel possessed sufficient information
20 to make an informed judgment regarding the likelihood of success on the merits and the results that
21 could be obtained through further litigation. Decl. Blumenthal at ¶28.

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

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

3 Here, no formal discovery took place prior to settlement. As the Ninth Circuit has
4 observed, however, "[i]n the context of class action settlements, 'formal discovery is not
5 a necessary ticket to the bargaining table' where the parties have sufficient information
6 to make an informed decision about settlement." *See In re Mego Financial Corp.*
7 *Securities Litigation*, 213 F.3d at 459.

8 *Glass*, 2007 U.S. Dist. LEXIS 8476 at *14.

9 Here, Class Counsel was in a stronger position to evaluate the fairness of this settlement because
10 Class Counsel had the same sufficient information, as well as formal discovery and document
11 production, independent investigations and due diligence to confirm the accuracy of the information
12 supplied by Defendant.

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

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

18 All individuals who worked for SolarCity in California as a commissioned salesperson
19 who were classified as non-exempt from December 24, 2009 to the date of filing of the
20 motion for preliminary approval (the "Class Period").

21 (Stipulation at ¶ 3.6.)

22 The Class Period is the period of time from December 24, 2009 to August 28, 2018. (Stipulation at ¶
23 3.8.) The Parties estimate that there are 4,728 Class Members who collectively worked 115,263 weeks
24 in the Class Period as Class Members.

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

26 Plaintiffs seek 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 has the burden to establish the existence of both an ascertainable class and
a well-defined community of interest among class members. (*citations omitted*). The

1 “community of interest” requirement embodies three factors: (1) predominant common
2 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.

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

4 While Defendant reserves all rights to dispute that the Plaintiffs can satisfy any of these
5 requirements, Defendant will not dispute that these requirements may be satisfied in this case for
6 purposes of settlement and therefore, the proposed Class should be certified for purposes of settlement.

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

8 Plaintiffs bring this action on behalf of a class of commissioned salesperson employees during
9 the applicable Class Period. All of these employees are ascertainable because the class members can
10 readily be determined through examination of Defendant’s employment files. Given that the class
11 consists of 4,728 members, numerosity is easily satisfied. See *Bowles v. Superior Court*, 44 Cal.2d 574
12 (1955) (class with 10 members sufficiently numerous); *Rose v. City of Hayward*, 126 Cal.App.3d 926,
13 934 (1981) (class of 48 members satisfies numerosity requirement.) Here, the approximately 4,728
14 current and former employees that comprise the Class can be identified based on Defendant’s records
15 and are sufficiently numerous for class certification. (Decl. Blumenthal at ¶30.)

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

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

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

28 Here, Plaintiffs contend that common questions of law and fact are present, and specifically the

1 common questions of whether Defendant's employment practices were lawful, whether Defendant
2 improperly calculated the regular rate for purposes of employee compensation, whether Defendant
3 failed to properly provide and/or pay for meal periods, and whether the Class is entitled to
4 compensation and related penalties. Decl. Blumenthal, ¶30. Defendant will not oppose such a finding
5 for purposes of this settlement only.

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

7 The typicality requirement requires Plaintiffs to demonstrate that the members of the class have
8 the same or similar claims as Plaintiffs. "The typicality requirement is met when the claims of the
9 Plaintiff[] arise from the same event or are based on the same legal theories." *Tate v. Weyerhaeuser*
10 *Co.*, 723 F.2d 598, 608 (8th Cir. 1983). In *Hanlon v. Chrysler Co.*, 150 F.3d 1011 (9th Cir. 1998), the
11 Ninth Circuit held that "[u]nder the rule's permissive standards, representative claims are 'typical' if
12 they are reasonably coextensive with those of absent class members; they need not be substantially
13 identical." 50 F.3d at 1020.

14 In the instant case, Plaintiffs contend that the typicality requirement is fully satisfied. The
15 Plaintiffs, like every other member of the Class, were employed by Defendant and are members of the
16 Class. Plaintiffs were subject to the same employment practices concerning the regular rate calculation
17 and meal periods. Thus, the claims of the Plaintiffs and the Class Members arise from the same course
18 of conduct by the Defendant, involve the same employment policies, and are based on the same legal
19 theories. Decl. Blumenthal at ¶30. For purposes of settlement, the typicality requirement is met as to
20 the common issues presented in this case. Defendant disputes that the typicality requirement is
21 satisfied, but does not oppose a finding of typicality for purposes of this settlement only.

22 **E. The Class Representatives Fairly and Adequately Protected the Class**

23 Plaintiffs contend that the Class Members are adequately represented here because they and
24 Class Counsel (a) do not have any conflicts of interest with other class members, and (b) will prosecute
25 the case vigorously on behalf of the class. *Hanlon*, 150 F.3d at 1020. First, Plaintiffs are well aware
26 of their duties as the representative of the Class and have actively participated in the prosecution of the
27 Lawsuits to date. They effectively communicated with counsel, provided documents to counsel and
28 participated in discovery, investigation and negotiations in the Lawsuits. Second, Plaintiffs retained

competent counsel who are experienced in employment class actions. (Decl. Blumenthal at ¶¶ 30 and 31; Declaration of Shaun Setareh at ¶¶ 3, 6; Declaration of Jamin Soderstrom at ¶¶ 2-6.) Third, there is no antagonism between the interests of the Plaintiffs and those of the Class. Both the Plaintiffs and the Class Members seek monetary relief under the same set of facts and legal theories.

F. The Superiority Requirement Is Met

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

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

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

Here, a class action is the superior mechanism for resolution of the claims as pled by the Plaintiffs. While Defendant would dispute that the superiority requirement may be satisfied in the absence of a settlement, it will not dispute such a finding for purposes of this settlement only.

VI. THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE

The Court has broad discretion in approving a practical notice program. The parties have agreed upon procedures by which the Class Members will be provided with written notice of the Settlement similar to that approved and utilized in hundreds of class action settlements. In accordance with the Stipulation, no later than 20 days after the Court enters its order granting preliminary approval of the Settlement, Defendant will provide the names, the last-known residence address for members of the Class, social security number, and the number of Work Weeks for each Class Member (“Class Data”) to the Claims Administrator. (Stipulation at ¶ 10.3.) Within 10 days after receiving the Class Data, the Claims Administrator will mail the Notice Packets to all Class Members via first-class regular U.S. Mail at their last-known addresses. (Stipulation at ¶ 11.1.)

The Notice, drafted jointly and agreed upon by the Parties through their respective counsel and

1 to be approved by the Court, includes all relevant information. (See Exhibit "A" to the Agreement.)
2 The Class Notice will include, among other information: (i) information regarding the Lawsuits; (ii)
3 the impact on the rights of the Class Members if they do not opt out; (iii) information to the Class
4 Members regarding how to opt out and how to object to the Settlement; (iv) the estimated settlement
5 payment for each of the Class Members; (v) the amount of attorneys' fees and litigation expenses to
6 be sought; (vi) the amounts of the Plaintiffs' service payment request; (vii) the amount being paid to
7 the LWDA; and (viii) the fees to be paid to the Claims Administrator. Decl. Blumenthal at ¶32.

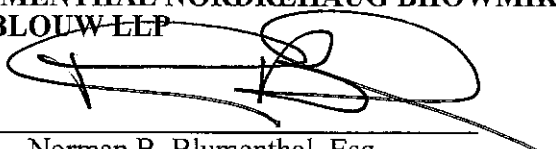
8 The Notice states that the Class members shall have forty-five (45) days from the date that the
9 Notice is mailed to them to request exclusion or to submit an objection. (Stipulation at ¶ 11.1.) The
10 Class Members shall be given the opportunity to object to the terms of the Stipulation and/or the request
11 for attorneys' fees and costs and to participate at the final approval hearing, in accordance with the
12 instructions set forth in the Class Notice. (Stipulation at ¶ 11.1.) Class Members who do not opt out
13 will automatically receive a settlement payment without the need for a claim form. (Stipulation at ¶
14 12.1.) This notice program was designed to reach the Class Members and advise them of all pertinent
15 information concerning the settlement. Decl. Blumenthal at ¶32. The mailing and distribution of the
16 Notice satisfies the requirements of due process, and is the best notice practicable under the
17 circumstances and constitutes due and sufficient notice to all persons entitled thereto. The Notice
18 provides information on the terms and provisions of the settlement; the benefits that settlement provides
19 for Class Members; the date, time and place of the final settlement approval hearing; and the procedure
20 and deadlines for submitting comments, objections and requests for exclusion and complies with Rules
21 of Court 3.766 and 3.769(f).

22 **VII. CONCLUSION**

23 Plaintiffs respectfully request that the Court preliminarily approve the proposed settlement and
24 sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the final
25 fairness hearing for a date that is one hundred twenty (120) days from the date of Preliminary Approval.

26 Dated: August 28, 2018

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

27 By: 
28 Norman B. Blumenthal, Esq.

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