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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **IN AND FOR THE COUNTY OF SANTA CLARA**

15 JAYMIE SALINAS and GLORIA
16 ZAMORA, individually, on behalf of
17 themselves and on behalf of all persons
18 similarly situated,

19 Plaintiff,

20 vs.

21 HOMEFIRST SERVICES OF SANTA
22 CLARA COUNTY, a California Non-Profit
23 Corporation; and DOES 1 through 50,
24 inclusive,

25 Defendants.

Case No. 23CV418047

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

Hearing Date: December 5, 2024
Hearing Time: 1:30 p.m.

Judge: Hon. Charles F. Adams
Dept.: 7

Action Filed: June 27, 2023
Trial Date: Not set

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1 **I. INTRODUCTION**

2 Plaintiffs Jaymie Salinas and Gloria Zamora (“Plaintiffs”) will move for an order: (1) preliminarily
3 approving the proposed settlement of this class action with Defendant HomeFirst Services of Santa Clara
4 County (“Defendant”); (2) for settlement purposes only, conditionally certifying the Class, which is
5 comprised of “all current and former hourly employees employed by Defendant in California who were
6 classified as non-exempt during the Class Period”, which is June 27, 2019 through February 14, 2024;
7 (3) provisionally appointing Plaintiffs as the representatives of the Class; (4) provisionally appointing
8 Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel for the Class; (5) approving the
9 form and method for providing notice to the Class of the proposed settlement; (6) directing that notice
10 of the proposed settlement be given to the Class; (7) appointing ILYM Group as the Administrator; and
11 (8) scheduling a final approval hearing date for April 17, 2025 to consider the Plaintiffs’ motion for final
12 approval of the settlement and for approval of attorneys’ fees, expenses and the service awards.
13 Plaintiffs and Defendant have reached a full and final settlement of the above-captioned action, which
14 is set forth in the Class Action and PAGA Settlement Agreement (the “Agreement”) filed concurrently
15 with the Court.¹ A copy of the fully executed Agreement is attached as Exhibit #1 to the Declaration
16 of Kyle Nordrehaug (“Decl. Nordrehaug”), served and filed herewith, and the form of the Agreement
17 is based on the Los Angeles Superior Court model form for class and PAGA settlements.

18 As consideration for this Settlement, the Gross Settlement Amount is Five Hundred Forty-Five
19 Thousand Dollars (\$545,000) to be paid by Defendant, as set forth in the Agreement. The Gross
20 Settlement Amount will settle all issues pending in the Action between the Parties and will be made in
21 full and final settlement of the released claims. The Gross Settlement Amount includes all payments of
22 Individual Class Payments to the Participating Class Members, the Administration Expenses Payment
23 to the Administrator, the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment
24 to Class Counsel, the Class Representative Service Payments to Plaintiffs, and the PAGA Penalties
25 payment to the California Labor and Workforce Development Agency (the “LWDA”) and the Aggrieved
26 Employees. The Gross Settlement Amount does not include the employer’s share of payroll taxes which

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

will be separately paid by Defendant. The Settlement is all-in with no reversion to Defendant and no need for Class Members to submit claim forms. Decl. Nordrehaug at ¶3. The following is a table of the key financial terms of the Settlement and the proposed deductions:

\$545,000 (Gross Settlement Amount)

- \$20,000 (Plaintiffs' proposed service awards not to exceed \$10,000 each)
- \$25,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- \$181,666 (Class Counsel Fees Payment - not to exceed one-third of settlement)
- \$12,000 (PAGA Penalties - 75% to LWDA / 25% to Aggrieved Employees)
- \$16,000 (Administration Expenses Payment - not to exceed amount)

\$290,334 (Net Settlement Amount)

Based upon 577 Class Members who collectively worked 52,000 Workweeks (Agreement at ¶4.1.), the Gross Settlement Amount provides a value of \$944 per Class Member and \$10 per Workweek and, after deductions, the Net Settlement Amount provides an average recovery of \$503.17 per Class Member and \$5.58 per Workweek. Decl. Nordrehaug at ¶6.

On March 7, 2024, the Parties participated in an all-day mediation session presided over by Gig Kyriacou, Esq., a respected and experienced mediator of wage and hour class actions. Following this mediation, the Parties reached an agreement to settle the Action. Decl. Nordrehaug at ¶5. The Settlement is fair, reasonable and adequate, and should be preliminarily approved because there is a substantial monetary payment, and there are substantial litigation and class-certification risks. Therefore, Plaintiff respectfully requests that this Court grant preliminary approval of the Agreement and enter the proposed order submitted herewith.

II. DESCRIPTION OF THE SETTLEMENT

The Gross Settlement Amount is Five Hundred Forty-Five Thousand Dollars (\$545,000). (Agreement at ¶ 1.22.) Under the Settlement, the Gross Settlement Amount consists of the following elements: (i) all Individual Class Payments and Individual PAGA Payments; (ii) the LWDA PAGA Payment; (iii) the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment; (iv) the Class Representative Service Payments; and (v) the Administration Expenses Payment. (Agreement at ¶ 1.22.) The Gross Settlement Amount does not include Defendant's share of payroll taxes. (Agreement at ¶ 3.1.) The Gross Settlement Amount shall be all-in with no reversion to Defendant. (Agreement at ¶ 3.1.) Decl. Nordrehaug at ¶15.

Within thirty (30) days of the Effective Date, Defendant shall make the first of four payments of

1 \$136,250.00, and three more payments every six months, to fund the Gross Settlement Amount with the
2 Administrator. (Agreement at ¶ 4.3.). On a *pro rata* basis, the Administrator shall proportionately make
3 a total of two (2) payment distributions with the first distribution to be made within fourteen (14) days
4 of the Second Payment and the second distribution to be made within fourteen (14) days of the Final
5 Payment. (Agreement at ¶ 5.1.) Decl. Nordrehaug at ¶ 16.

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

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

25 A Participating Class Member must cash the check for his or her Individual Class Payment (and,
26 if applicable, Individual PAGA Payment) within 180 days after it is mailed. (Agreement at ¶ 5.2.) Any
27 settlement checks not cashed within 180 days will be voided and any funds represented by such checks
28 sent to the California Controller's Unclaimed Property Fund, leaving no residue subject to the

1 requirements of California Code of Civil Procedure Section 384, subd. (b). (Agreement at ¶ 5.4.) Decl.
2 Nordrehaug at ¶19.

3 Subject to Court approval, the Parties have agreed on ILYM Group to administer the settlement
4 in this action (the “Administrator”). (Agreement at ¶ 1.2.) The Administrator will be paid for settlement
5 administration in an amount not to exceed \$16,000. (Agreement at ¶ 3.2(c).) Decl. Nordrehaug at ¶20.
6 A Declaration from ILYM Group is submitted herewith.

7 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
8 to exceed one-third of the Gross Settlement Amount as the Class Counsel Fees Payment. (Agreement
9 at ¶ 3.2(b).) Class Counsel will also be allowed to apply for an award of Class Counsel Litigation
10 Expenses Payment in an amount not to exceed \$25,000. (Agreement at ¶ 3.2(b).) Subject to Court
11 approval, the Agreement provides for a payment of no more than \$10,000 each to Plaintiffs as the Class
12 Representative Service Payments. (Agreement at ¶ 3.2(a).) Decl. Nordrehaug at ¶21.

13 Subject to Court approval, \$12,000 will be paid from the Gross Settlement Amount in settlement
14 of Plaintiffs’ claim for civil penalties under the California Labor Code Private Attorneys General Act
15 (“PAGA”), Cal. Labor Code Section 2698, *et seq.* Pursuant to the express requirements of Labor Code
16 § 2699(i), the PAGA Penalties payment shall be allocated as follows: 75% (\$9,000) shall be allocated
17 to the LWDA as its share of the civil penalties and 25% (\$3,000) allocated to the Aggrieved Employees
18 and distributed as Individual PAGA Payments based on the number of their respective PAGA Pay
19 Periods. (Agreement at ¶ 3.2(d).) As set forth in the accompanying proof of service, the LWDA has been
20 served with this motion and the Agreement. Decl. Nordrehaug at ¶22.

21 **III. CASE BACKGROUND**

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

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

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

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

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

25 _____
26 ² California courts look to federal authority on class actions. *Vasquez v. Superior Court*, 4 Cal.3d
27 800, 821 (1971). "It is well established that in the absence of relevant state precedents trial courts are
28 urged to follow the procedures prescribed in Rule 23 of the Federal Rules of Civil Procedure for
conducting class actions." *Frazier v. City of Richmond*, 184 Cal. App.3d 1491, 1499 (1986), *citing*
Green v. Obledo, 29 Cal.3d 126, 145-146 (1981).

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

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

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

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

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

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

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

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

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

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

26 ³ The release applicable to the Class is tethered to allegations in the Action as the “Released Class
27 Claims” are “all claims alleged or could have been alleged based on the facts alleged in the Operative
28 Complaint, which arose during the Class Period. Except as to the named Plaintiffs, participating Class
Members do not release claims for vested benefits, wrongful termination, violation of the Fair

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

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

18 Class Counsel has conducted a thorough investigation into the facts of the class action. Over
19 the course of more than a year, Class Counsel diligently evaluated the Class Members' claims against
20 Defendant. Prior to the settlement negotiations, counsel for Defendant provided Class Counsel with
21 access to necessary documents and information for the Class. In addition, Class Counsel has previously
22 negotiated settlements with other employers in actions involving nearly identical issues and analogous
23 defenses. Based on the informal discovery and their own independent investigation, evaluation and
24 experience, Class Counsel believes that the settlement with Defendant on the terms set forth in the
25 Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known

26 _____
27 Employment and Housing Act, unemployment insurance, disability, social security, workers'
28 compensation, or California class claims occurring outside the Class Period." (Agreement at ¶¶ 1.38 and 6.2.)

1 facts and circumstances, including the Defendant's financial condition, the risk of significant delay, the
2 risk that the claims would not be allowed to proceed on a class or representative basis, the defenses
3 asserted by Defendant, and potential appellate issues. Decl. Nordrehaug at ¶ 14.

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

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

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

18 The proposed Settlement has no "obvious deficiencies" and is well within the range of possible
19 approval. All Class Members will receive an opportunity to participate in the Settlement and receive
20 payment according to the same formula. (Agreement at ¶ 3.2(e).) Based upon 577 Class Members who
21 collectively worked 52,000 Workweeks (Agreement at ¶ 4.1.), the Gross Settlement Amount provides
22 a value of \$944 per Class Member and \$10 per Workweek and, after deductions, the Net Settlement
23 Amount provides an average recovery of \$503.17 per Class Member and \$5.58 per Workweek. Decl.
24 Nordrehaug, ¶ 6.

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

1 due to the alleged miscalculation of the regular rate applicable to overtime pay and sick pay was
2 \$58,831, the maximum value of the claim for unpaid wages due to alleged off-the-clock work was
3 \$1,807,672, the maximum potential damages for alleged meal period violations were estimated to be
4 \$2,838,834 based upon a 50% violation rate observed in the time records and after deduction of meal
5 premiums already paid by Defendant, the maximum potential damages for alleged rest period violations
6 were estimated to be \$2,801,753 based upon the same 50% potential violation rate observed for meal
7 periods, and the maximum potential damages for the alleged failure to reimburse business expenses were
8 calculated to be \$66,265 based upon \$5 per month. In total, the damages for the Class were calculated
9 to have a maximum potential total value of \$7,573,355. In addition, Plaintiff calculated that the
10 maximum value of the potential waiting time penalties was between \$1,836,753 and \$2,273,505,
11 depending on the predicate violations, and the maximum value of the potential wage statement penalties
12 was between \$889,400 and \$1,193,700, depending on the predicate violation.⁴ Decl. Nordrehaug, ¶6.

13 Consequently, the Gross Settlement Amount represents more than 7% of Plaintiffs' calculation
14 of the potential maximum damages at issue for the Class in this case, assuming these amounts could all
15 be proven in full at trial.⁵ Importantly, the recent decision that good faith belief of compliance by the
16 employer in *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065 (2024), could completely
17 negate the claims for waiting time and wage statement penalties, even if wages were owed to the class.
18 The maximum calculations should then be realistically risk rated in consideration for both the risk of class
19 certification and the risk of establishing class-wide liability on all claims. Given the amount of the
20 Settlement as compared to the potential value of the claims, the Settlement is most certainly fair and
21

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

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

1 reasonable.⁶ Clearly, the goal of this litigation has been met. Decl. Nordrehaug, ¶6.

2 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
3 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of issues and defenses asserted
4 by Defendant present serious threats to the claims of the Plaintiffs and the other Class Members. The
5 most important consideration here was Defendant's financial condition. Defendant is a nonprofit
6 organization, which operates with a very thin margin and has almost no cash on hand. Additionally,
7 almost all of HomeFirst's funding and assets are "use-restricted" and cannot be used for settlement
8 purposes. As a result, Defendant would be unable to pay any significant judgment. As to the merits,
9 Defendant maintains that its practices complied with all applicable wage and hour laws. Defendant
10 maintains that all Class Members' work time was properly recorded and compensated and that there was
11 no miscalculation of the regular rate. Defendant contends that its meal and rest period policies and
12 practices provide Class Members with meal and rest periods and that the payment of meal premiums is
13 evidence of Defendant's legal compliant practices. As to expense reimbursement, Defendant maintains
14 that it did not fail to provide reimbursement for necessary business expenses because, among other
15 things, employees are not required to use their personal cell phones to perform their work. Defendant
16 could argue that the decisions in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), *Lockheed Martin*
17 *Corp. v. Superior Ct.*, 29 Cal. 4th 1096, 1108 (2003), and *Salazar v. See's Candy Shops Inc.*, 64
18 Cal.App.5th 85 (2021), weakened Plaintiffs' claims in terms of liability and value, and preclude claims
19 from proceeding on a class or representative basis. Defendant also maintains that a good faith dispute
20 and absence of willfulness would negate the claims for waiting time penalties and/or failure to provide
21 accurate itemized wage statements. See e.g. *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056,
22 1065 (2024) ("if an employer reasonably and in good faith believed it was providing a complete and

23
24 ⁶ See *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)
25 approving settlement which represented "roughly one-sixth of the potential recovery"); *Stovall-Gusman*
26 *v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval
27 where "the proposed Total Settlement Amount represents approximately 10% of what class might have
28 been awarded had they succeeded at trial."); *Viceral v. Mistras Grp., Inc.*, 2016 WL 5907869 (N.D. Cal.
2016) (approving wage and hour class action settlement amounting to 8.1% of full verdict value); *Ma*
v. Covidien Holding, Inc., 2014 WL 2472316, (C.D. Cal. 2014) (approving wage and hour class action
settlement worth "somewhere between 9% and 18%" of full verdict value).

1 accurate wage statement in compliance with the requirements of section 226, then it has not knowingly
2 and intentionally failed to comply with the wage statement law.”) If successful, Defendant’s financial
3 condition and defenses as to the merits could eliminate or substantially reduce any recovery to the Class.
4 Decl. Nordrehaug, ¶ 24.

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

19 After arm’s-length negotiations between experienced and informed counsel, the Parties
20 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of
21 \$545,000.00. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

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

28 2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
(9th Cir. 2000)).

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

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

8 Plaintiffs will apply to the Court for Class Representative Service Payments in consideration for
9 their service and for the risks undertaken on behalf of the Class. (Agreement at ¶ 3.2(a).) Plaintiffs
10 performed their duties admirably by working with Class Counsel. Decl. Nordrehaug at ¶27. The
11 concurrently filed declarations of the Plaintiffs are presented herewith in support of the request. For
12 purposes of this preliminary approval stage, the requested service award is well within the accepted
13 range of awards for purposes of preliminary approval, subject to the Court's determination of the
14 amount at final approval. *See, e.g., Andrews v. Plains All Am. Pipeline L.P.*, 2022 U.S. Dist. LEXIS
15 172183, at *11 (C.D. Cal. 2022) (finding that the requested service awards of \$15,000 each are
16 appropriate); *Reynolds v. Direct Flow Med., Inc.*, 2019 U.S. Dist. LEXIS 149865, at *19 (N.D. Cal.
17 2019) (granting request for \$12,500 service award); *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S.
18 Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500 where average class member payment was
19 \$351); *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D. Cal. Oct. 06, 2008)
20 (awarding \$25,000 service award to each of six plaintiffs in overtime class action); *Glass v. UBS Fin.*
21 *Servs.*, 2007 WL 221862, *16-17 (N.D. Cal. 2007) (awarding \$25,000 service award in overtime class
22 action and a pool of \$100,000 in enhancements). As explained in *Glass*, service awards are routinely
23 awarded to class representatives to compensate them for the time and effort expended on the case, for
24 the risk of litigation, for the fear of suing an employer and retaliation therefrom, and to serve as an
25 incentive to vindicate the statutory rights of all employees. 2007 WL 221862 at *16-17.

26 **4. The Stage Of The Proceedings Are Sufficiently Advanced To Permit**
27 **Preliminary Approval Of The Settlement.**

28 The stage of the proceedings at which the Settlement was reached also militates in favor of
preliminary approval and, ultimately, final approval of the Settlement. Class Counsel has conducted a

1 thorough investigation into the facts of the class action. Class Counsel began investigating the Class
2 Members' claims before the Action was filed. Class Counsel engaged in an investigation of the claims
3 and conducted a review and analysis of the relevant documents and data. Class Counsel was also
4 experienced with the claims at issue here, as Class Counsel previously litigated and settled similar claims
5 in other actions. Accordingly, the agreement to settle did not occur until Class Counsel possessed
6 sufficient information to make an informed judgment regarding the likelihood of success on the merits
7 and the results that could be obtained through further litigation. Decl. Nordrehaug at ¶28.

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

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

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

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

28 All current and former hourly employees employed by Defendant in California who were

1 classified as non-exempt during the Class Period.

2 (Agreement at ¶ 1.5.)

3 The “Class Period” is from June 27, 2019 to February 14, 2024. (Agreement at ¶ 1.13.)

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

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

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

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

16 Plaintiffs contend that the proposed Class satisfies the criteria for certification under Code of
17 Civil Procedure section 382. Defendant disputes that Plaintiffs can satisfy any of these requirements for
18 class certification in the litigation context, but does not oppose certification for purposes of the
19 Settlement. Accordingly, the proposed Class should be certified for purposes of the Settlement only.
20 (Agreement at ¶ 2.7.)

21 **1. Ascertainability And Numerosity.**

22 Plaintiffs bring this Action on behalf of a Class of non-exempt employees who worked for
23 Defendant during the applicable Class Period. Plaintiffs assert that all of these individuals are
24 ascertainable because the class members can readily be determined through examination of Defendant’s
25 files. Given that the Class consists of approximately 577 members, Plaintiffs maintain that numerosity
26 is clearly satisfied. *See Bowles v. Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members
27 sufficiently numerous); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of 48 members
28 satisfies numerosity requirement.) Here, Plaintiffs assert that the 577 individuals who comprise the Class
can be identified based on Defendant’s records and are sufficiently numerous for class certification.
Decl. Nordrehaug at ¶30.

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

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

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

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

19 **3. Typicality.**

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

26 In the Action, Plaintiffs contend that there can be little doubt that the typicality requirement is
27 satisfied. Plaintiffs worked for Defendant as non-exempt employee during the Class Period. Plaintiffs
28 contend that, like every other member of the Class, they was subjected to the same practices and policies

1 of Defendant and is subject to the same defenses. Thus, Plaintiffs assert that the claims of Plaintiffs and
2 the Class Members arise from the same course of conduct by the Defendant, involve the same
3 employment policies and practices of Defendant, and are based on the same legal theories. Decl.
4 Nordrehaug at ¶30. For purposes of settlement, Plaintiffs maintain that the typicality requirement is met
5 as to the common issues presented in this case.

6 **4. Adequacy.**

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

16 **5. Superiority.**

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

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

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

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

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

2 The Court has broad discretion in approving a practical notice program. *7- Eleven Owners for*
3 *Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1164 (2000). The Parties have agreed
4 upon procedures by which the Class Members will be provided with written notice of the Settlement
5 similar to those approved and utilized in hundreds of class action settlements. In accordance with the
6 Agreement, Defendant will provide to the Administrator a confidential electronic spreadsheet containing
7 the Class Data. (Agreement at ¶ 4.2.) Within 14 days after receiving the Class Data, the Administrator
8 will mail the Class Notice to all Class Members via first-class U.S. Mail using the most current mailing
9 address information available. (Agreement at ¶ 8.4(b).) The Class Notice Packet will include a Spanish
10 translation. (Agreement at ¶ 1.11.)

11 The Class Notice, drafted jointly and agreed upon by the Parties through their respective counsel
12 and to be approved by the Court, includes all relevant information. (*See Exhibit "A"* to the Agreement.)
13 The Class Notice will include, among other information: (i) information regarding the Action; (ii) the
14 impact on the rights of the Class Members if they do not opt out, including a description of the
15 applicable release; (iii) information to the Class Members regarding how to opt out and how to object
16 to the Settlement; (iv) the estimated Individual Class Payment (and, if applicable, Individual PAGA
17 Payment) for each of the Class Members and how to dispute the information used to calculate the
18 payment; (iii) the amount of attorneys' fees and expenses to be sought; (v) the amount of the Plaintiffs'
19 service award request; and (vi) the anticipated expenses of the Administrator. Decl. Nordrehaug at ¶32.

20 The Class Notice will state that the Class Members shall have sixty (60) days from the date that
21 the Notice is mailed to them (the "Response Deadline") to request exclusion (opt-out), and that the
22 Response Deadline shall be extended 14 days in the event of a re-mailing. (Agreement at ¶¶ 1.42,
23 8.5(a).) Class Members shall be given the opportunity to object to the Settlement and/or requests for
24 attorneys' fees and expenses and to appear at the Final Approval Hearing. (Agreement at ¶ 8.7.) Class
25 Members who do not submit a timely and proper request to opt out will automatically receive a payment
26 of their Individual Class Payment (and, if applicable, their Individual PAGA Payment). This notice
27 program was designed to meaningfully reach the Class Members and it advises them of all pertinent
28 information concerning the Settlement. Decl. Nordrehaug at ¶32. The mailing and distribution of the

1 Class Notice satisfies the requirements of due process, is the best notice practicable under the
2 circumstances, and complies with Rules of Court 3.766 and 3.769(f).

3 **VII. CONCLUSION**

4 Based on the foregoing, Plaintiff respectfully requests that the Court preliminarily approve the
5 proposed settlement and sign the proposed Preliminary Approval Order, which is submitted herewith,
6 and schedule the final approval hearing for April 17, 2025.

7 Dated: November 4, 2024

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Kyle Nordrehaug

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