

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

Norman B. Blumenthal (State Bar #068687)
Kyle R. Nordrehaug (State Bar #205975)
Aparajit Bhowmik (State Bar #248066)
2255 Calle Clara
La Jolla, CA 92037
Telephone: (858)551-1223
Facsimile: (858) 551-1232
Email: Kyle@bamlawca.com
Website: www.bamlawca.com

Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF GLENN**

FABIAN MARTINEZ, PAUL ADAMS,
MICHAEL RUSH, and RICHARD L.
YOUNG, individually on behalf of
themselves and on behalf of all persons
similarly situated,

Plaintiffs,

vs.

JOHNS MANVILLE, a Corporation; and
DOES 1 through 50, inclusive,

Defendants.

CASE NO.: **23CV03097**

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

Hearing Date: November 20, 2024
Hearing Time: 2:30 p.m.

Judge: Hon. Alicia Ekland
Dept.: 2

Date Action Filed: March 15, 2023
Trial Date: Not set

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	DESCRIPTION OF THE SETTLEMENT.....	2
III.	CASE BACKGROUND.....	3
IV.	THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO GRANT PRELIMINARY APPROVAL	3
A.	The Role Of The Court In Preliminary Approval Of A Class Action Settlement	4
B.	Factors To Be Considered In Granting Preliminarily Approval	5
1.	The Settlement is the Product of Serious, Informed and Arm's Length Negotiations by Experienced Counsel	5
2.	The Settlement Has No "Obvious Deficiencies" and Falls Within the Range for Approval.....	7
3.	The Settlement Does Not Improperly Grant Preferential Treatment To Class Representatives or Segments Of The Class	10
4.	The Stage Of The Proceedings Are Sufficiently Advanced To Permit Preliminary Approval Of The Settlement	11
V.	THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES	11
A.	California Code of Civil Procedure § 382	12
B.	The Proposed Class Is Ascertainable and Numerous	12
C.	Common Issues of Law and Fact Predominate.....	12
D.	The Claims of the Plaintiffs Are Typical of the Class Claims	13
E.	The Class Representation Fairly and Adequately Protected the Class	14
F.	The Superiority Requirement Is Met.....	14
VI.	THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE	15
VII.	CONCLUSION.....	15

TABLE OF AUTHORITIES

<u>Cases:</u>	<u>Page:</u>
<i>Andrews v. Plains All Am. Pipeline L.P.</i> , 2022 U.S. Dist. LEXIS 172183 (C.D. Cal. 2022)	10
<i>Brinker v. Superior Court</i> , 53 Cal. 4th 1004 (2012)	9
<i>Bowles v. Superior Court</i> , 44 Cal.2d 574 (1955)	12
<i>Cellphone Termination Fee Cases</i> , 180 Cal.App.4th 1110 (2009)	3
<i>Cho v. Seagate Tech. Holdings, Inc.</i> , 177 Cal. App. 4th 734 (2009)	4
<i>Dunk v. Ford Motor Co.</i> , 48 Cal.App.4th 1794 (1996)	3, 4, 6
<i>Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)</i> , 213 F.3d 454 (9 th Cir. 2000)	9
<i>Duran v. U.S. Bank National Assn.</i> , 59 Cal. 4th 1 (2014)	9
<i>Frazier v. City of Richmond</i> , 184 Cal.App.3d 1491 (1986)	4
<i>Gautreaux v. Pierce</i> , 690 F.2d 616 (7th Cir. 1982)	4
<i>Ghazaryan v. Diva Limousine, Ltd.</i> , 169 Cal. App. 4th 1524 (2008)	2
<i>Glass v. UBS Fin. Servs.</i> , 2007 U.S. Dist. LEXIS 8476 (N.D.Cal. 2007)	8, 9, 10
<i>Green v. Obledo</i> , 29 Cal.3d 126 (1981)	4
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9 th Cir. 1998)	8, 13, 14
<i>In re Tableware Antitrust Litig.</i> , 484 F.Supp. 2d 1078 (N.D. Cal. 2007)	5
<i>In re Wash. Public Power Supply System Sec. Litig.</i> , 720 F. Supp. 1379 (D. Ariz. 1989)	6
<i>Kullar v. Foot Locker</i> , 168 Cal. App. 4th 116 (2008)	5, 6

1	<i>Linder v. Thrifty Oil Co.</i> ,	13
2	23 Cal. 4th 429 (2003)	
3	<i>Louie v. Kaiser Foundation Health Plan, Inc.</i> ,	10
4	2008 WL 4473183 (S.D.Cal. 2008)	
5	<i>Ma v. Covidien Holding, Inc.</i> ,	8
6	2014 WL 2472316, (C.D. Cal. 2014)	
7	<i>Mathein v. Pier 1 Imps. (U.S.), Inc.</i> ,	10
8	2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018).....	
9	<i>Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.</i> ,	5
10	221 F.R.D. 523 (C.D. Cal. 2004).....	
11	<i>Naranjo v. Spectrum Sec. Servs., Inc.</i> ,	8,9
12	15 Cal. 5th 1056 (2024)	
13	<i>Nordstrom Comm'n Cases</i> ,	3, 8
14	186 Cal. App. 4th 576 (2010)	
15	<i>Officers for Justice v. Civil Service Com'n, etc.</i> ,	3, 4, 5
16	688 F.2d. 615 (9th Cir. 1982)	
17	<i>Reynolds v. Direct Flow Med., Inc.</i> ,	10
18	2019 U.S. Dist. LEXIS 149865 (N.D. Cal. 2019).....	
19	<i>Rose v. City of Hayward</i> ,	12
20	126 Cal.App.3d 926 (1981)	
21	<i>Sav-On Drug Stores, Inc. v. Superior Court</i> ,	12, 15
22	34 Cal. 4th 319 (2004)	
23	<i>Sayaman v. Baxter Healthcare Corp.</i> ,	4
24	2010 U.S. Dist. LEXIS 151997 (C.D. Cal. 2010).....	
25	<i>Stovall-Gusman v. W.W. Granger, Inc.</i> ,	8
26	2015 U.S. Dist. LEXIS 78671 (N.D. Cal. 2015).....	
27	<i>Tate v. Weyerhaeuser Co.</i> ,	13
28	723 F.2d 598 (8th Cir. 1983)	
	<i>Valentino v. Carter-Wallace, Inc.</i> ,	14
	97 F.3d 1227 (9th Cir. 1996)	
	<i>Vasquez v. Superior Court</i> ,	4
	4 Cal.3d 800 (1971)	
	<i>Viceral v. Mistras Grp., Inc.</i> ,	8
	2016 WL 5907869 (N.D. Cal. Oct. 11, 2016).....	
	<i>Wershba v. Apple Computer, Inc.</i> ,	4
	91 Cal.App.4th 224 (2001)	

1	<u>Statutes, Rules and Regulations:</u>	
2	California Code of Civil Procedure §382	11, 12
3	California Labor Code §203	7
4	California Labor Code §226	7
5	California Rules of Court, rule 3.766	15
6	California Rules of Court, rule 3.769	4, 15

7		
8	<u>Secondary Sources:</u>	
9	2 H. Newberg & A. Conte, <i>Newberg on Class Actions</i> (3d ed. 1992)	4, 12
10	<i>Manual For Complex Litigation</i> , (Second), §30.44, 41.43 (1993).....	4

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **I. INTRODUCTION**

2 Plaintiffs Fabian Martinez, Paul Adams, Michael Rush, and Richard L. Young (“Plaintiffs”)
3 respectfully submit this memorandum in support of the motion for preliminary approval of the proposed
4 class action settlement with Defendant Johns Manville (“Defendant”), and seek entry of an order:
5 (1) preliminarily approving the proposed settlement of this class action with Defendant; (2) for
6 settlement purposes only, conditionally certifying the Class, which is comprised of “all individuals who
7 were employed by Defendant in California and classified as non-exempt employees at any time during
8 the Class Period”, which is August 20, 2020 through November 20, 2024; (3) provisionally appointing
9 Plaintiffs as the representatives of the Class; (4) provisionally appointing Blumenthal Nordrehaug
10 Bhowmik De Blouw LLP as Class Counsel; (5) approving the form and method for providing class-
11 wide notice; (6) directing that notice of the proposed settlement be given to the Class; (7) appointing
12 Apex Class Action as Administrator, and (8) scheduling a final approval hearing date, proposed for
13 April 16, 2025, to consider Plaintiffs’ motion for final approval of the settlement and for approval of
14 attorneys’ fees, expenses and the service awards. Plaintiffs and Defendant (collectively the “Parties”)
15 have reached a full and final settlement of the above-captioned action, which is set forth in the Class
16 Action and PAGA Settlement Agreement (“Agreement”) filed concurrently with the Court.¹ A copy
17 of the fully executed Agreement is attached as Exhibit #1 to the Declaration of Kyle Nordrehaug
18 (“Decl. Nordrehaug”), served and filed herewith. The form of the Agreement is based upon the Los
19 Angeles County Superior Court model form for a class and PAGA settlement.

20 As consideration for this Settlement, the non-reversionary Gross Settlement Amount of Seven
21 Hundred Fifty Thousand Dollars (\$750,000.00) (the “Gross Settlement Amount”) is to be paid by
22 Defendant, as set forth in the Agreement. The Gross Settlement Amount will settle all issues pending
23 in the Action between the Parties and will be made in full and final settlement of the Released Class
24 and PAGA Claims in exchange for the payments to Participating Class Members from the Net
25 Settlement Amount, and includes (a) the costs of administration of the settlement, (b) all attorneys' fees
26 and costs, (c) Class Representative Service Payment, and (d) the PAGA Penalties payment allocated
27

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

75% to the LWDA and 25% to the Aggrieved Employees. (Agreement at ¶ 1.21.) Decl. Nordrehaug at ¶3. The following is a table of the key Settlement terms and the proposed deductions:

\$750,000 (Gross Settlement Amount)

- \$25,000 (Plaintiffs' proposed service awards - not to exceed amount)
- \$40,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- \$250,000 (Class Counsel Fees Payment - not to exceed 1/3 of settlement)
- \$20,000 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
- \$13,000 (Administration Expenses Payment - not to exceed amount)

\$435,667 (Net Settlement Amount)

Based upon 632 Class Members who worked an estimated 75,000 work weeks (Agreement at ¶ 4.1), the Gross Settlement Amount provides an average value of \$1,186 per Class Member and \$10 per workweek and after deductions the Net Settlement Amount provides an average recovery of \$636.07 per Class Member and a recovery of \$5.36 per workweek. Decl. Nordrehaug at ¶6.

On May 17, 2024, the Parties participated in an all-day mediation with David Rotman, a respected and experienced mediator of wage and hour class actions. Following the mediation, the Parties agreed on the basic terms of a settlement pursuant to a mediator's proposal, memorialized in the form of a Memorandum of Understanding. Decl. Nordrehaug at ¶5. Defendant has denied all liability and does not, by this settlement admit any liability, but has chosen to settle the case to avoid the expense and disruption of litigation. The Settlement is fair, reasonable and adequate, and should be preliminarily approved, because there is a substantial monetary payment, and there are significant litigation risks. Plaintiffs respectfully request 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 Seven Hundred Fifty Thousand Dollars (\$750,000). (Agreement at ¶ 1.21.) Under the Settlement, the Gross Settlement Amount consists of the following elements: (1) payment of the Individual Class Payments to the Participating Class Members; (2) Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (3) Administration Expenses Payment; (4) the Class Representative Service Payments to the Plaintiffs; and (5) the PAGA Penalties payment. (Agreement at ¶ 1.21.) 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.

1 The Agreement contains appropriate terms for a class settlement. (See Agreement at ¶¶ 1.27,
2 3.2, 4.3, 5.1.) The proposed Class Notice also provides the required protections for the Class to opt out,
3 object or dispute their weeks worked. (See Agreement at ¶¶ 8.5, 8.6, 8.7, and Exhibit A.) The
4 additional details of the Settlement are addressed in the Decl. Nordrehaug at ¶¶ 16-22. As set forth in
5 the accompanying proof of service, the LWDA has been served with this motion and the Agreement.

6 **III. CASE BACKGROUND**

7 The description of the case and claims, along with the procedural history is set forth in the
8 Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and the
9 exchange of documents and information in connection with the Action for more than one year which
10 permitted Class Counsel to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10, 14.
11 The Parties participated in a mediation on May 17, 2024 with David Rotman, which after arms' length
12 negotiations during and after the mediation, resulted in this Settlement. Decl. Nordrehaug, ¶12.

13 **IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO** 14 **GRANT PRELIMINARY APPROVAL**

15 California "[p]ublic policy generally favors the compromise of complex class action litigation."
16 *Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 581 (2010) quoting *Cellphone Termination Fee*
17 *Cases*, 180 Cal.App.4th 1110, 1117-18 (2009). Class action settlements are approved where the
18 proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
19 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982), cert.
20 denied, 459 U.S. 1217 (1983)).

21 Preliminary approval is the first of three steps that comprise the approval procedure for
22 settlements of class actions. The second step is the dissemination of notice of the settlement to all class
23 members. The third step is a final settlement approval hearing, at which evidence and argument
24 concerning the fairness, adequacy, and reasonableness of the settlement may be presented, and class
25 members may be heard regarding the settlement. *See Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
26 1801 (1996); *Manual for Complex Litigation, Second* §30.44 (1993); Cal. Rules of Court, rule 3.769.

27 The primary question presented on an application for preliminary approval of a proposed class
28 action settlement is whether the proposed settlement is "within the range of possible approval." *Manual*

1 *for Complex Litigation*, Second §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir.
2 1982).² Preliminary approval is merely the prerequisite to giving notice so that “the proposed
3 settlement... may be submitted to members of the prospective Class for their acceptance or rejection.”
4 *Sayaman v. Baxter Healthcare Corp.*, 2010 U.S. Dist. LEXIS 151997, *3 (C.D. Cal. 2010). There is
5 “a presumption of fairness . . . where . . . [a] settlement is reached through arms-length bargaining.”
6 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 245 (2001) (citation omitted); see also *Cho v.*
7 *Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th 734, 742-45 (2009) (upholding trial court’s
8 determination that settlement was “fair, reasonable and adequate” where the settlement “provided
9 valuable benefits to the class . . . that were ‘particularly valuable in light of the risks plaintiff would have
10 faced if she proceeded to litigate her case.’”); *Newberg*, 3d Ed., §11.41, p.11-88. However, the ultimate
11 question of whether the proposed settlement is fair, reasonable and adequate is made after notice of the
12 settlement is given to the class members and a final settlement 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, supra*, 91 Cal.App.4th at 234-235; *Dunk*, 48 Cal.App.4th 1794.
16 In considering a potential settlement for preliminary approval purposes, the trial court does not have
17 to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute,
18 and need not engage in a trial on the merits. *Wershba, supra*, 91 Cal.App.4th at 239-40; *Dunk, supra*,
19 48 Cal.App. 4th at 1807. The Ninth Circuit explained that, “the very essence of a settlement is
20 compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” *Officers for Justice*, 688
21 F.2d at 624. Thus, when analyzing the settlement, the amount is “not to be judged against a
22 hypothetical or speculative measure of what might have been achieved by the negotiators.” *Officers*
23 *for Justice*, 688 F.2d at 625, 628.

24 With regard to class action settlements, the opinions of counsel should be given considerable

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).

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

B. Factors To Be Considered In Granting Preliminary Approval

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

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

This settlement is the result of extensive and hard-fought litigation as well as negotiations before an experienced and well-respected mediator. Defendant has expressly denied and continues to deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Nonetheless, Defendant has concluded that further conduct of the Actions would be protracted and expensive, and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in the Agreement. Plaintiffs and Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released Class Claims of the Class in accordance with this Settlement. The release applicable to the Class is appropriately tethered to factual allegations in the Action. (Agreement at ¶¶ 1.37 and 6.2.)

Class Counsel are experienced and qualified to evaluate the class claims, the defenses asserted,

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

8 The Parties attended an arms-length mediation session with David Rotman, a respected and
9 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
10 for the mediation, Defendant provided Class Counsel with payroll, time and employment data for the
11 Class, along with other information regarding the Class Members, various internal documents, and
12 other compensation and employment-related materials. Class Counsel analyzed the data with the
13 assistance of damages expert Berger Consulting and prepared and submitted a mediation brief to the
14 mediator. The final settlement terms were negotiated and set forth in the Agreement now presented for
15 this Court's approval. Decl. Nordrehaug at ¶ 5. Importantly, Plaintiffs and Class Counsel believe that
16 this Settlement is fair, reasonable and adequate.

17 Class Counsel has conducted a thorough investigation into the facts of the class action as
18 detailed in the Decl. Nordrehaug. Based on the Class data and their own independent investigation,
19 evaluation and experience, Class Counsel believes that the settlement with Defendant on the terms set
20 forth in the Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light
21 of all known facts and circumstances, including the risk of significant delay, defenses asserted by
22 Defendant, and potential appellate issues. Decl. Nordrehaug at ¶ 14. Plaintiffs and Class Counsel
23 recognize the risks, expense and length of continuing to litigate and trying this Action against
24 Defendant and then litigating possible appeals which could take several years. Plaintiffs and Class
25 Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the
26 Class Members. Decl. Nordrehaug, ¶ 23.

27 Here, there can be no dispute that the litigation has been hard-fought with aggressive and
28 capable advocacy on both sides. The Parties were represented by experienced and capable counsel who

1 zealously advocated their positions. Accordingly, “[t]here is likewise every reason to conclude that
2 settlement negotiations were vigorously conducted at arms’ length and without any suggestion of undue
3 influence.” *In re Wash. Public Power Supply Sec. Litig.*, 720 F. Supp. 1379, 1392 (D. Ariz 1989).

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

6 The proposed Settlement herein has no "obvious deficiencies" and is well within the range of
7 possible approval. All Class Members will receive an opportunity to participate in the Settlement and
8 receive payment according to the same formula. (Agreement at ¶ 3.2(e).) Based upon 632 Class
9 Members who worked an estimated 75,000 work weeks (Agreement at ¶ 4.1), the Gross Settlement
10 Amount provides an average value of \$1,186 per Class Member and \$10 per workweek and after
11 deductions the Net Settlement Amount provides an average recovery of \$636.07 per Class Member and
12 a recovery of \$5.36 per workweek. Decl. Nordrehaug, ¶6.

13 The calculations to compensate for the amount due for the Class at the time of the mediation
14 were calculated by Berger Consulting, Plaintiffs’ damage expert. As to the Class whose claims are at
15 issue in this Action, Plaintiff used the expert to analyze the data and determine the potential unpaid
16 wages for the employees. The maximum potential damages were calculated to be \$2,818,571 for the
17 alleged unpaid wages for off-the-clock work at one hour per week, \$30,234 for the alleged unpaid
18 overtime wages, \$27,228 for the alleged unpaid overtime wages due to the miscalculation of the regular
19 rate, \$22,127 for the alleged unpaid meal premiums and sick pay due to the alleged miscalculation of
20 the result rate, \$1,355,029 for alleged meal period damages based upon a 36.4% potential violation rate
21 for all shifts worked observed in the time records and after deduction for meal premiums paid by
22 Defendant, \$1,757,480 for alleged rest period damages based upon the same 36.4% potential violation
23 rate for shifts worked and after deduction for rest premiums paid by Defendant, and \$77,690 for alleged
24 unreimbursed cell-phone expenses at \$5 per month. Decl. Nordrehaug, ¶6. As a result, the total
25 damage valuation was calculated that Defendant were subject to a maximum damage claim in the
26 amount of \$6,088,359. As to potential penalties, Plaintiff calculated that potential waiting time
27 penalties were a maximum of between \$1,970,709 and \$1,970,709, depending on the predicate violation
28

1 giving rise to the penalty, and potential maximum wage statement penalties were \$1,816,000.³
2 Defendant vigorously disputed Plaintiffs' calculations and exposure theories and contends it complied
3 with all applicable laws. Decl. Nordrehaug, ¶6.

4 Consequently, the Gross Settlement Amount of \$750,000 represents more than 12% of the
5 maximum value of the alleged damages at issue in this case at the time this Settlement was negotiated.⁴
6 Importantly, the recent decision that good faith belief of compliance by the employer in *Naranjo v.*
7 *Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065 (2024), could completely negate the claims for
8 waiting time and wage statement penalties, even if wages were owed to the Class. The above maximum
9 calculations should then be realistically risk adjusted in consideration for both the risk of class
10 certification and the risk of establishing class-wide liability on all claims. Given the amount of the
11 settlement as compared to the potential value of claims in this case and the defenses asserted by
12 Defendant, this settlement is fair and reasonable.⁵ Clearly, the goal of this litigation has been met.
13 Decl. Nordrehaug, ¶6.

14 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
15

16 ³ While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
17 226, at mediation Plaintiffs recognized that these claims were subject to additional, separate defenses
18 asserted by Defendant, including, a good faith dispute defense as to whether any premium wages for
19 meal or rest periods or other wages were owed given Defendant's position that Plaintiff and Class
20 Members were properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584
21 (2010) ("There is no willful failure to pay wages if the employer and employee have a good faith dispute
22 as to whether and when the wages were due.").

23 ⁴ Because the PAGA claim is not a class claim and primarily is paid to the State of California,
24 Plaintiffs have not included the PAGA claim in this discussion of the value of the class claims. The
25 PAGA claim is addressed in the Decl. Nordrehaug at ¶33.

26 ⁵ See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a
27 settlement where the settlement amount constituted approximately 25% of the estimated overtime
28 damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12
(N.D. Cal. 2015) (granting final approval where "the proposed Total Settlement Amount represents
approximately 10% of what class might have been awarded had they succeeded at trial."); *Viceral v.*
Mistras Grp., Inc., 2016 WL 5907869 (N.D. Cal. 2016) (approving wage and hour class action
settlement amounting to 8.1% of full value); *Ma v. Covidien Holding, Inc.*, 2014 WL 2472316, (C.D.
Cal. 2014) (approving wage and hour class action settlement worth "somewhere between 9% and 18%"
of maximum valuation).

1 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
2 Defendant present serious threats to the claims of the Plaintiffs and the other Class Members.
3 Defendant asserted that Defendant's practices complied with all applicable Labor laws. Defendant
4 argued that Class Members were paid for all time worked and that all work time was properly recorded.
5 Defendant maintained there was no miscalculation of the regular rate when paying wages to the
6 Plaintiffs and the Class. Defendant contends that its meal and rest period policies fully complied with
7 California law and that Defendant did not fail to provide the opportunity for legally required meal and
8 rest breaks. Defendant could argue that its payment of significant meal period premiums is evidence
9 of its lawful practices. Defendant contends that there was no failure to pay for business expenses and
10 any cell phone usage was merely convenient and voluntary such that reimbursement was not legally
11 required. Finally, Defendant could argue that the Supreme Court decision in *Brinker v. Superior Court*,
12 53 Cal. 4th 1004 (2012), weakened Plaintiffs' claims, on liability, value, and class certifiability as to
13 the meal and rest period claims. Defendant also argues that based on its facially lawful practices,
14 Defendant acted in good faith and without willfulness, which if accepted would negate the claims for
15 waiting time penalties and/or inaccurate wage statements. See e.g. *Naranjo v. Spectrum Sec. Servs.,*
16 *Inc.*, 15 Cal. 5th 1056, 1065 (2024) ("if an employer reasonably and in good faith believed it was
17 providing a complete and accurate wage statement in compliance with the requirements of section 226,
18 then it has not knowingly and intentionally failed to comply with the wage statement law.") If
19 successful, Defendant's defenses could eliminate or substantially reduce any recovery to the Class.
20 While Plaintiffs believe that these defenses could be overcome, Defendant maintains these defenses
21 have merit and therefore present a serious risk to recovery by the Class. Decl. Nordrehaug, ¶ 24.

22 There was also a significant risk that, if the Action was not settled, Plaintiffs would be unable
23 to obtain a certified class and maintain the certified class through trial, and thereby not recover on
24 behalf of any employees other than themselves. At the time of the mediation, Defendant forcefully
25 opposed the propriety of class certification, arguing that individual issues precluded class certification.
26 Further, as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National*
27 *Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class-wide recovery even
28 where the class has been certified. While other cases have approved class certification in wage and

1 hour claims, class certification in this action was hotly disputed and the maintenance of a certified class
2 through trial was by no means a foregone conclusion. Decl. Nordrehaug, ¶ 25.

3 After arm's length negotiations between experienced and informed counsel, the Parties
4 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of
5 \$750,000. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

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

12 2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
13 (9th Cir. 2000)).

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

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

21 Plaintiffs will apply to the Court for Class Representative Service Payments in consideration
22 for their service and for the risks undertaken on behalf of the Class. (Agreement at ¶ 3.2(a).) Plaintiffs
23 performed their duties admirably by working with Class Counsel over the course of litigation, and are
24 giving a general release beyond the class release for this service award. The Declarations of the
25 Plaintiffs are submitted herewith in support. Decl. Nordrehaug at ¶27. At this stage, the requested
26 service award amounts are within the range of reasonableness for purposes of preliminary approval.
27 See e.g. *Andrews v. Plains All Am. Pipeline L.P.*, 2022 U.S. Dist. LEXIS 172183, at *11 (C.D. Cal.
28 2022) (finding that the requested service awards of \$15,000 each are appropriate); *Reynolds v. Direct*
Flow Med., Inc., 2019 U.S. Dist. LEXIS 149865, at *19 (N.D. Cal. 2019) (granting request for \$12,500
service award); *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018)
(awarding \$12,500 where average class member payment was \$351); *Louie v. Kaiser Foundation*

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

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

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

20 Based on the foregoing data and their own independent investigation and evaluation, Class
21 Counsel is of the opinion that the Settlement with Defendant for the consideration and on the terms set
22 forth in the Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light
23 of all known facts and circumstances, including the risk of significant delay, defenses asserted by
24 Defendant, and numerous potential appellate issues. Decl. Nordrehaug at ¶29.

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

26 Plaintiffs contend that the proposed settlement meets all of the requirements for class
27 certification under California Code of Civil Procedure § 382 as demonstrated below, and therefore, the
28

1 Court may appropriately approve the Class as defined in the Agreement. This Court should
2 conditionally certify the Class for settlement purposes only, defined as follows:

3 All individuals who were employed by Defendant in California and classified as
4 non-exempt employees at any time during the Class Period.

5 (Agreement at ¶ 1.5.)

6 The Class Period is from August 20, 2020 to November 20, 2024.⁶ (Agreement at ¶ 1.13).

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

8 Plaintiffs seek certification of this Class for settlement purposes under California Code of Civil
9 Procedure § 382. The California Supreme Court has summarized the standard for determining whether
10 class certification is appropriate as follows:

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

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

16 While Defendant reserves all rights to dispute that the Plaintiffs can satisfy these requirements,
17 the Parties agree that Defendant will not dispute that these requirements may be satisfied in this case
18 for purposes of settlement only and therefore, the proposed Class should be certified for purposes of
19 settlement only.⁷ (Agreement at ¶ 2.8.)

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

21 Plaintiffs bring this action on behalf of a Class of non-exempt employees of Defendant during
22 the Class Period. Plaintiffs assert that all of these individuals are ascertainable because the class
23 members can readily be determined through examination of Defendant’s files. Given that the Class

24
25 ⁶ This end date assumes that Preliminary Approval is granted on November 20, 2024, as expected.
26 If preliminary approval is not granted on this date, the Class Period will end on the earlier of preliminary
approval or 90 days from the execution of the Agreement.

27 ⁷ If for any reason the settlement does not proceed on a class basis, Defendant will not be deemed
28 to have waived or limited any defense to class, collective, or representative action treatment.
(Agreement at ¶ 2.8.)

1 consists of approximately 632 individuals, Plaintiffs maintain that numerosity is clearly satisfied. *See*
2 *Bowles v. Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members); *Rose v. City of Hayward*, 126
3 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.) Here, Plaintiffs
4 assert that the 632 current and former employees that comprise the Class can be identified based on
5 Defendant's records and are sufficiently numerous for class certification. Decl. Nordrehaug at ¶30.

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

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

12 Commonality exists if there is a predominant common legal question regarding how an
13 employer's policies impact its employees. *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524,
14 1536 (2008) ("[T]he common legal question remains the overall impact of Diva's policies on its
15 drivers.") Whether the plaintiff is likely to prevail on their theory of recovery is irrelevant at the
16 certification stage since the question is "essentially a procedural one that does not ask whether an action
17 is legally or factually meritorious." *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2003).

18 Here, Plaintiffs contend that common questions of law and fact are present, specifically the
19 common questions of whether Defendant's employment practices were lawful, whether Defendant
20 failed to provide meal and rest periods to Class Members, whether Class members were lawfully
21 compensated for all hours worked, whether Defendant miscalculated the regular rate when paying Class
22 Members wages, whether Defendant failed to provide required expense reimbursement, and whether
23 Class Members are entitled to damages and penalties as a result of these practices. Plaintiffs contend
24 that certification of this Class is appropriate because Defendant allegedly engaged in uniform practices
25 with respect to the Class Members. As a result, these common questions of liability could be answered
26 on a class wide basis. Decl. Nordrehaug, ¶30.

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

28 The typicality requirement requires the Plaintiffs to demonstrate that the members of the class

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

6 In this Action, Plaintiffs contend that the typicality requirement is fully satisfied. Plaintiffs, like
7 every other member of the Class, were employed by Defendant as non-exempt employees, and, like
8 every other member of the Class, were subject to the same employment practices. Plaintiffs, like every
9 other member of the Class, also claim owed compensation as a result of the Defendant’s uniform
10 company policies and practices. Thus, the claims of Plaintiffs and the members of the Class arise from
11 the same course of conduct by Defendant, involve the same issues, and are based on the same legal
12 theories. Decl. Nordrehaug at ¶30. Plaintiffs assert that the typicality requirement is met as to the
13 common issues presented in this case.

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

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

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

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

6 Absent class treatment, each individual plaintiff would present in separate, duplicative
7 proceedings the same or essentially the same arguments and evidence, including expert
8 testimony. The result would be a multiplicity of trials conducted at enormous expense
9 to both the judicial system and the litigants.

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

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

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

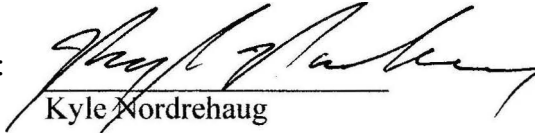
13 The Court has broad discretion in approving a practical notice program. *7- Eleven Owners for*
14 *Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1164 (2000). The Parties have agreed
15 upon procedures by which the Class Members will be provided with written notice of the Settlement
16 similar to that approved and utilized in hundreds of class action settlements and the Class Notice
17 includes all relevant information. (See Exhibit “A” to the Agreement.) Decl. Nordrehaug at ¶32. The
18 Class Notice will explain that the Class Members shall have forty-five (45) days from the date that the
19 Class Notice is mailed to them (the “Response Deadline”) to request exclusion (opt-out) or to submit
20 a written objection. (Agreement at ¶¶ 1.41, 8.5, 8.7.) Class Members shall be given the opportunity
21 to object to the Settlement and/or the attorneys’ fees and expenses, and to appear at the Final Approval
22 Hearing. (Agreement at ¶ 8.7.) This notice program was designed to meaningfully reach the Class
23 Members and it advises them of all pertinent information concerning the Settlement. Decl. Nordrehaug
24 at ¶32. The distribution of the Class Notice satisfies the requirements of due process, is the best notice
25 practicable under the circumstances, and complies with Rules of Court 3.766 and 3.769(f).

26 **VII. CONCLUSION**

27 Plaintiff respectfully requests that the Court preliminarily approve the proposed settlement and
28 sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the final
approval hearing for the proposed date of April 16, 2025.

1 Dated: October 23, 2024

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

2
3 By: 
4 Kyle Nordrehaug

Attorney for Plaintiffs

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28