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

MARIAH MACIAS, an individual, on behalf
of herself and on behalf of all persons similarly
situated,

Plaintiffs,

vs.

POSITIVE BEHAVIOR SUPPORTS CORP.,
a California Corporation; and DOES 1 through
50, inclusive,

Defendants.

CASE NO.: **34-2023-00337859-CU-OE-GDS**

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

Hearing Date: February 7, 2025
Hearing Time: 9:00 a.m.
Reservation ID # **A-337859-006**

Judge: Hon. Laurie A Damrell
Dept: 22

Date Filed: April 12, 2023
Trial Date: Not set

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1 **I. INTRODUCTION**

2 Plaintiff Mariah Macias (“Plaintiff”) respectfully submits this memorandum in support of the
3 unopposed motion for preliminary approval of the proposed class action settlement with Defendant
4 Positive Behavior Supports Corp. (“Defendant”) which seeks entry of an order: (1) preliminarily
5 approving the proposed settlement of this class action with Defendant; (2) for settlement purposes only,
6 conditionally certifying the Class, which is comprised of “all individuals who are or previously were
7 employed by Defendant in California and classified as a non-exempt employee at any time during the
8 Class Period”; (3) provisionally appointing Plaintiff as the representative of the Class; (4) provisionally
9 appointing Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit Bhowmik of Blumenthal
10 Nordrehaug Bhowmik De Blouw LLP as Class Counsel; (5) approving the form and method for
11 providing class-wide notice; (6) directing that notice of the proposed settlement be given to the class;
12 (7) appointing ILYM Group, Inc. as Administrator, and (8) scheduling a final approval hearing date,
13 proposed for June 27, 2025 which is at least 120 days from preliminary approval, to consider Plaintiff’s
14 motion for final approval of the settlement and for approval of attorneys’ fees and expenses. Plaintiff
15 and Defendant (collectively the “Parties”) have reached a full and final settlement of the
16 above-captioned action, which is embodied in the Class Action and PAGA Settlement Agreement
17 (“Agreement”) filed concurrently with the Court.¹ A copy of the fully executed Agreement is attached
18 as Exhibit #1 to the Declaration of Kyle Nordrehaug (“Decl. Nordrehaug”), served and filed herewith.

19 As consideration for this Settlement, the non-reversionary Gross Settlement Amount of One
20 Million Six Hundred Thousand Dollars (\$1,600,000) (the “Gross Settlement Amount”) is to be paid by
21 Defendant, as set forth in the Agreement. The Gross Settlement Amount will settle all issues pending
22 in the Action between the Parties and will be made in full and final settlement of the Released Class
23 Claims in exchange for the payments to Participating Class Members from the Net Settlement Amount,
24 and includes (a) the costs of administration of the settlement, (b) all attorneys' fees and costs, (c) the
25 Class Representative Service Payment, and (d) the PAGA Penalties payment allocated 75% to the
26 LWDA and 25% to the Aggrieved Employees. (Agreement at ¶ 1.22.) Decl. Nordrehaug at ¶3. The
27

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

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

\$1,600,000 (Gross Settlement Amount)

- \$10,000 (Plaintiff's proposed service award - not to exceed amount)
- \$18,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- \$533,333 (Class Counsel Fees Payment - not to exceed 1/3 of settlement)
- \$50,000 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
- \$20,000 (Administration Expenses Payment - not to exceed amount)

\$968,667 (Net Settlement Amount)

Based upon 2,812 Class Members who collectively worked 112,906 Workweeks, the Gross Settlement Amount provides an average value of \$568.99 per Class Member and \$14.17 per Workweek and after deductions the Net Settlement Amount provides an average recovery of \$344.47 per Class Member and a recovery of \$8.57 per Workweek. Decl. Nordrehaug at ¶6.

On June 11, 2024, the Parties participated in an all-day mediation session presided over by Hon. Brian Walsh (Ret.), a respected and experienced mediator of wage and hour class actions. Following this mediation, the Parties agreed on the basic terms of a settlement pursuant to a mediator's proposal which was memorialized in the form of a Memorandum of Understanding. 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 significant 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 One Million Six Hundred Thousand Dollars (\$1,600,000). (Agreement at ¶ 1.22.) Under the Settlement, the Gross Settlement Amount consists of the following elements: (1) payment of the Individual Class Payments to the Participating Class Members; (2) Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (3) Administration Expenses Payment; (4) the Class Representative Service Payment to the Plaintiff; and (5) the PAGA Penalties 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.

Defendant shall fund the Gross Settlement Amount and the amount necessary to pay payroll taxes thereon no later than 14 days after the Effective Date. (Agreement at ¶ 4.3.) The distribution of

1 Individual Class Payments to Participating Class Members will be made within 14 days after Defendant
2 funds the Gross Settlement Amount. (Agreement at ¶ 5.1.) Decl. Nordrehaug at ¶16.

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

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

23 Participating Class Members must cash their Individual Class Payment check within 180 days
24 after it is mailed. (Agreement at ¶ 5.2.) Any settlement checks not cashed within 180 days will be
25 voided and any funds represented by such checks sent to the Bay Area Legal Aid, a nonprofit
26 organization or foundation consistent with Code of Civil Procedure Section 384(b) (“Cy Pres
27 Recipient”). The Parties, Class Counsel and Defendant's Counsel represent that they have no interest
28 or relationship, financial or otherwise, with the intended Cy Pres Recipient. (Agreement at ¶ 5.4.) Decl.

1 Nordrehaug at ¶19.

2 Subject to Court approval, the Parties have agreed on ILYM Group, Inc. to administer the
3 settlement in this action (“Administrator”). (Agreement at ¶ 1.2.) The Administrator will be paid for
4 settlement administration in an amount not to exceed \$20,000. (Agreement at ¶ 3.2(c).) Apex Class
5 Action provided an estimate of \$17,550 for administration expenses. Decl. Nordrehaug at ¶20.

6 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
7 to exceed one-third of the Gross Settlement Amount, as the Class Counsel Fees Payment. (Agreement
8 at ¶ 3.2(b).) Class Counsel will also be allowed to apply separately for an award of Class Counsel
9 Litigation Expenses Payment in an amount not to exceed \$18,000. (Agreement at ¶ 3.2(b).) Subject
10 to Court approval, the Agreement provides for a payment of no more than \$10,000 for the Plaintiff as
11 the Class Representative Service Payment. (Agreement at ¶ 3.2(a).) Decl. Nordrehaug at ¶21.

12 Subject to Court approval, the PAGA Penalties will be paid from the Gross Settlement Amount
13 for PAGA penalties under the California Private Attorneys General Act, Cal. Labor Code Section 2698,
14 *et seq.* (“PAGA”). The PAGA Penalties are \$50,000. (Agreement at ¶¶ 1.34 and 3.2(d).) Pursuant to
15 the express requirements of Labor Code § 2699(i), the PAGA Payment shall be allocated as follows:
16 75% shall be allocated to the Labor Workforce Development Agency (“LWDA”) as its share of the civil
17 penalties and 25% allocated to the Individual PAGA Payments to be distributed to the Aggrieved
18 Employees based on the number of their respective PAGA Pay Periods.² (Agreement at ¶ 3.2(d).) As
19 set forth in the accompanying proof of service, the LWDA has been served with this motion and the
20 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 the
24 exchange of documents and information in connection with the Action over nearly two years which
25 permitted Class Counsel to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and 14.

26
27
28 ² This Action was filed prior to June 2024, and therefore the prior version of Labor Code ¶2699
applies to the 75/25 allocation.

1 The Parties participated in mediation on June 11, 2024 with Hon. Brian Walsh (Ret.), which after arms'
2 length negotiations during the mediation, resulted in this Settlement. Decl. Nordrehaug, ¶12.

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

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 v. Ford Motor Co.*, 48 Cal.App.4th 1794,
16 1801 (1996); *Manual for 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).³ 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 ³ 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 1794.
10 In considering a potential settlement for preliminary approval purposes, the trial court does not have
11 to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute,
12 and need not engage in a trial on the merits. *Wershba, supra*, 91 Cal.App.4th at 239-40; *Dunk, supra*,
13 48 Cal.App. 4th at 1807. The Ninth Circuit explains, "the very essence of a settlement is compromise,
14 'a yielding of absolutes and an abandoning of highest hopes.'" *Officers for Justice*, 688 F.2d at 624.
15 Thus, when analyzing the settlement, the amount is "not to be judged against a hypothetical or
16 speculative measure of what might have been achieved by the negotiators." *Officers for Justice*, 688
17 F.2d at 625, 628.

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

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

24 A number of factors are to be considered in evaluating a settlement for purposes of preliminary
25 approval. In determining whether to grant preliminary approval, the court considers whether the "(1)
26 the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, (2)
27 has no obvious deficiencies, (3) does not improperly grant preferential treatment to class representatives
28 or segments of the class, and (4) falls within the range of possible approval." *In re Tableware Antitrust*

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

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

9 This settlement is the result of extensive and hard-fought litigation as well as negotiations before
10 an experienced and well-respected mediator. Defendant has expressly denied and continues to deny any
11 wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff and Class
12 Counsel have determined that it is desirable and beneficial to the Class to resolve the Released Class
13 Claims of the Class in accordance with this Settlement. The release applicable to the Class is
14 appropriately tethered to allegations in the Action. (Agreement at ¶¶ 1.38 and 6.2.).

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

23 The Parties attended an arms-length mediation session with Hon. Brian Walsh (Ret.), a respected
24 and experienced mediator of wage and hour class actions, in order to reach this Settlement. In
25 preparation for the mediation, Defendant provided Class Counsel with payroll and employment data
26 and other information regarding the Class Members, various internal documents, and other
27 compensation and employment-related materials. Class Counsel analyzed the data with the assistance
28 of damages expert Berger Consulting and prepared and submitted a mediation brief to the mediator. The

1 final settlement terms were negotiated and set forth in the Agreement now presented for this Court's
2 approval. Decl. Nordrehaug at ¶ 5. Importantly, Plaintiff and Class Counsel believe that this Settlement
3 is fair, reasonable and adequate.

4 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant is
5 One Million Six Hundred Thousand Dollars (\$1,600,000). The Settlement is all-in with no reversion
6 to Defendant and no need to submit a claim form. Decl. Nordrehaug at ¶ 3.

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

19 Plaintiff and Class Counsel recognize the expense and length of continuing to litigate and trying
20 this Action against Defendant through possible appeals which could take several years. Class Counsel
21 has also taken into account the uncertain outcome and risk of litigation, especially in complex class
22 actions such as this Action. Class Counsel is also mindful of and recognize the inherent problems of
23 proof under, and alleged defenses to, the claims asserted in the Action. Based upon their evaluation,
24 Plaintiff and Class Counsel have determined that the Settlement set forth in the Agreement is in the best
25 interest of the Class Members. Decl. Nordrehaug, ¶ 23.

26 Here, there can be no dispute that the litigation has been hard-fought with aggressive and
27 capable advocacy on both sides. The Parties were represented by experienced and capable counsel who
28 zealously advocated their positions. Accordingly, "[t]here is likewise every reason to conclude that

1 settlement negotiations were vigorously conducted at arms' length and without any suggestion of undue
2 influence.” *In re Wash. Public Power Supply System Sec. Litig.*, 720 F. Supp. at 1392.

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

5 The proposed Settlement herein has no "obvious deficiencies" and is well within the range of
6 possible approval. All Class Members will receive an opportunity to participate in the Settlement and
7 receive payment according to the same formula. (Agreement at ¶ 3.2(e).) Based upon 2,812 Class
8 Members who collectively worked 112,906 Workweeks, the Gross Settlement Amount provides an
9 average value of \$568.99 per Class Member and \$14.17 per Workweek and after deductions the Net
10 Settlement Amount provides an average recovery of \$344.47 per Class Member and a recovery of \$8.57
11 per Workweek. Decl. Nordrehaug, ¶6.

12 The calculations to compensate for the amount due for the Class at the time of the mediation
13 were calculated by Berger Consulting, Plaintiff's damage expert. As to the Class whose claims are at
14 issue in this Action, Plaintiff used this expert to analyze the data and determine the potential unpaid
15 wages for the employees. The maximum potential damages were calculated to be \$2,721,489 for the
16 alleged unpaid wages due to off-the-clock work at 1 hour per week, \$73,302 for the alleged unpaid
17 wages for sick pay due to the miscalculation of the regular, \$71,904 for the alleged underpaid meal
18 premiums, \$529,931 for alleged meal period damages based upon a 28.8% potential violation rate for
19 shifts observed in the time records, and \$529,931 for alleged rest period damages based upon the same
20 28.8% potential violation rate observed for meal breaks, \$140,355 for alleged unreimbursed business
21 expenses for personal cell phone usage at \$5 per month. Decl. Nordrehaug, ¶6. As a result, the total
22 damage valuation was calculated that Defendant was subject to a maximum damage claim in the
23 amount of \$4,066,912 As to potential penalties, Plaintiff calculated that potential waiting time penalties
24 were a maximum of \$4,287,213, and potential maximum wage statement penalties were \$4,264,100.⁴

25
26 ⁴ While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and 226,
27 at mediation Plaintiff recognized that these claims were subject to additional, separate defenses asserted
28 by Defendant, including, a good faith dispute defense as to whether any premium wages for meal or rest
periods or other wages were owed given Defendant's position that Plaintiff and Class Members were
properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584 (2010) ("There

1 Defendant vigorously disputed Plaintiff's calculations and exposure theories. See Decl. Nordrehaug,
2 at ¶6 for additional details as to the valuation of the claims.

3 Consequently, the Gross Settlement Amount of \$1,600,000 represents more than 39% of the
4 maximum value of the alleged damages at issue in this case at the time this Settlement was negotiated.⁵
5 Importantly, the recent decision that good faith belief of compliance by the employer in *Naranjo v.*
6 *Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065 (2024), could completely negate the claims for
7 waiting time and wage statement penalties, even if wages were owed to the Class. The above maximum
8 calculations should then be adjusted in consideration for both the risk of class certification and the risk
9 of establishing class-wide liability on all claims. Given the amount of the settlement as compared to
10 the potential value of claims in this case and the defenses asserted by Defendant, this settlement is fair
11 and reasonable.⁶ Clearly, the goal of this litigation has been met. Decl. Nordrehaug, ¶6.

12 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
13 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
14 Defendant present serious threats to the claims of the Plaintiff and the other Class Members. Defendant
15 asserted that Defendant's practices complied with all applicable Labor laws. Defendant argued that
16 Class Members were paid for all time worked and that all work time was properly recorded. Defendant

17 _____
18 is no willful failure to pay wages if the employer and employee have a good faith dispute as to whether
19 and when the wages were due.").

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

23 ⁶ See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a
24 settlement where the settlement amount constituted approximately 25% of the estimated overtime
25 damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12
26 (N.D. Cal. 2015) (granting final approval where "the proposed Total Settlement Amount represents
27 approximately 10% of what class might have been awarded had they succeeded at trial."); *Dunleavy v.*
28 *Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000) (affirming approval of
a class settlement which represented "roughly one-sixth of the potential recovery".) See also *Viceral v.*
Mistras Grp., Inc., 2016 WL 5907869 (N.D. Cal. 2016) (approving wage and hour class action
settlement amounting to 8.1% of full value); *Ma v. Covidien Holding, Inc.*, 2014 WL 2472316, (C.D.
Cal. 2014) (approving wage and hour class action settlement worth "somewhere between 9% and 18%"
of maximum valuation).

1 contends that its meal and rest period policies fully complied with California law and Defendant did not
2 fail to provide the opportunity for legally required meal and rest breaks. Defendant contends that there
3 was no failure to pay for business expenses and any cell phone usage was merely convenient and
4 voluntary such that reimbursement was not legally required. Finally, Defendant could argue that the
5 Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), weakened Plaintiff's
6 claims, on liability, value, and class certifiability as to the meal and rest period claims. Defendant also
7 argues that based on their facially lawful practices, Defendant acted in good faith and without
8 willfulness, which if accepted would negate the claims for waiting time penalties and/or inaccurate
9 wage statements. See e.g. *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065 (May 6, 2024)
10 ("if an employer reasonably and in good faith believed it was providing a complete and accurate wage
11 statement in compliance with the requirements of section 226, then it has not knowingly and
12 intentionally failed to comply with the wage statement law.") Defendant's defenses could eliminate or
13 substantially reduce any recovery to the Class. While Plaintiff believes that these defenses could be
14 overcome, Defendant maintains these defenses have merit and therefore present a serious risk to
15 recovery by the Class. Decl. Nordrehaug, ¶ 24.

16 There was also a significant risk that, if the Action was not settled, Plaintiff would be unable
17 to obtain a certified class and maintain the certified class through trial, and thereby not recover on behalf
18 of any employees other than themselves. At the time of the mediation, Defendant forcefully opposed
19 the propriety of class certification, arguing that individual issues precluded class certification.
20 Defendant also argued that the existence of arbitration agreements with many class members would
21 preclude certification of the Class. Further, as demonstrated by the California Supreme Court decision
22 in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles to overcome
23 for a class-wide recovery even where the class has been certified. While other cases have approved
24 class certification in wage and hour claims, class certification in this action was hotly disputed and the
25 maintenance of a certified class through trial was by no means a foregone conclusion. Decl.
26 Nordrehaug, ¶ 25. Additional discussions of these risks of litigation and the defenses asserted by the
27 Defendant are detailed in the Decl. Nordrehaug at ¶ 26.

28 After arm's length negotiations between experienced and informed counsel, the Parties

1 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of
2 \$1,600,000. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

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

9 2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
10 (9th Cir. 2000)).

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

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

18 Plaintiff will apply to the Court for a Class Representative Service Payment in consideration for
19 her service and for the risks undertaken on behalf of the Class. (Agreement at ¶ 3.2(a).) Plaintiff
20 performed her duties admirably by working with Class Counsel over the course of litigation. The
21 Declaration of the Plaintiff is submitted herewith in support. Decl. Nordrehaug at ¶27. At this stage,
22 the requested service award is well within the accepted range of awards for purposes of preliminary
23 approval, subject to the Court’s determination at final approval. *See e.g. Andrews v. Plains All Am.*
24 *Pipeline L.P.*, 2022 U.S. Dist. LEXIS 172183, at *11 (C.D. Cal. 2022) (finding that the requested
25 service awards of \$15,000 each are appropriate); *Reynolds v. Direct Flow Med., Inc.*, 2019 U.S. Dist.
26 LEXIS 149865, at *19 (N.D. Cal. 2019) (granting request for \$12,500 service award); *Mathein v. Pier*
27 *1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500 where average
28 class member payment was \$351); *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008 WL 4473183,
*7 (S.D. Cal. Oct. 06, 2008) (awarding \$25,000 service award to each of six plaintiffs in overtime class
action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D. Cal. 2007) (awarding \$25,000
service award in overtime class action and a pool of \$100,000 in enhancements). As explained in

1 *Glass*, service awards are routinely awarded to class representatives to compensate the employees for
2 the time and effort expended on the case, for the risk of litigation, for the fear of suing an employer and
3 retaliation there from, and to serve as an incentive to vindicate the statutory rights of all employees.
4 2007 WL 221862 at *16-17.

5 **4. The Stage Of The Proceedings Are Sufficiently Advanced To Permit**
6 **Preliminary Approval Of The Settlement**

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

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

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

26 Plaintiff contends 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 Court may appropriately approve the Class as defined in the Agreement. This Court should

1 conditionally certify the Class for settlement purposes only, defined as follows:

2 All individuals who are or previously were employed by Defendant in California and
3 classified as a non-exempt employee at any time during the Class Period.

4 (Agreement at ¶ 1.5.)

5 The Class Period is from April 12, 2019 to September 20, 2024. (Agreement at ¶ 1.13.)

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

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

10 Code of Civil Procedure Section 382 authorizes class actions “when the question is one
11 of a common or general interest, of many persons, or when the parties are numerous, and
12 it is impracticable to bring them all before the court....” The party seeking certification
13 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.

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

15 While Defendant reserves all rights to dispute that the Plaintiff can satisfy these requirements,
16 the Parties agree that Defendant will not dispute that these requirements may be satisfied in this case
17 for purposes of settlement only and therefore, the proposed Class should be certified for purposes of
18 settlement only. (Agreement at ¶ 2.7.)

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

20 Plaintiff brings this action on behalf of a Class of non-exempt employees of Defendant during
21 the Class Period. Plaintiff asserts that all of these individuals are ascertainable because the class
22 members can readily be determined through examination of Defendant’s files. Given that the Class
23 consists of 2,812 individuals, Plaintiff maintains that numerosity is clearly satisfied. *See Bowles v.*
24 *Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose v. City of*
25 *Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.)
26 Here, Plaintiff asserts that the 2,812 current and former employees that comprise the Class can be
27 identified based on Defendant’s records and are sufficiently numerous for class certification. Decl.
28 Nordrehaug at ¶30.

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

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*
4 *on 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
6 fact 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, Plaintiff contends that common questions of law and fact are present, specifically the
14 common questions of whether Defendant’s employment practices were lawful, whether Defendant
15 failed to provide meal and rest periods to Class Members, whether Class members were lawfully
16 compensated for all hours worked, whether Defendant failed to provide required expense
17 reimbursement, and whether Class Members are entitled to damages and penalties as a result of these
18 practices. Plaintiff contends that certification of this Class is appropriate because Defendant allegedly
19 engaged in uniform practices with respect to the Class Members. As a result, these common questions
20 of liability could be answered on a class wide basis. Decl. Nordrehaug, ¶30. Defendant disputes that
21 common questions predominate but will not oppose such a finding for purposes of this Settlement only.

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

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

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

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

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

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

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

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

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

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

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

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

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

22 The Class Notice, drafted jointly and agreed upon by the Parties through their respective counsel
23 and to be approved by the Court, includes all relevant information. (See Exhibit “A” to the Agreement.)
24 The Class Notice will include a Spanish translation. (Agreement at ¶ 1.11.) The Class Notice will
25 include, among other information: (i) information regarding the Action; (ii) the impact on the rights of
26 the Class Members if they do not opt out, including a description of the applicable release; (iii)
27 information to the Class Members regarding how to opt out and how to object to the Settlement; (iv)
28 the estimated Individual Class Payment for each of the Class Members; (iii) the amount of attorneys’
fees and expenses to be sought; (v) the amount of the Plaintiff’s service award request; and (vi) the
anticipated expenses of the Administrator. Decl. Nordrehaug at ¶32.

1 The Class Notice will state that the Class Members shall have sixty (60) days from the date that
2 the Class Notice is mailed to them (the “Response Deadline”) to request exclusion (opt-out) or to
3 submit a written objection. (Agreement at ¶¶ 1.42, 8.5, 8.7.) Class Members shall be given the
4 opportunity to object to the Settlement and/or requests for attorneys’ fees and expenses and to appear
5 at the Final Approval Hearing. (Agreement at ¶ 8.7.) Class Members who do not submit a timely and
6 proper request to opt-out will automatically receive a payment of their Individual Class Payment. This
7 notice program was designed to meaningfully reach the Class Members and it advises them of all
8 pertinent information concerning the Settlement. Decl. Nordrehaug at ¶32. The mailing and
9 distribution of the Class Notice satisfies the requirements of due process and is the best notice
10 practicable under the circumstances and complies with Rules of Court 3.766 and 3.769(f).

11
12 **VII. CONCLUSION**

13 Plaintiff respectfully request that the Court preliminarily approve the proposed settlement and
14 sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the final
15 approval hearing for the proposed date of June 27, 2025, which date is at least one hundred twenty (120)
16 days from the date of Preliminary Approval.

17 Dated: January 13, 2025

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

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