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

GINA MARTINEZ, ISMAEL ORTEGA,
JESSICA SAELOR, as individuals, on
behalf of themselves and others similarly
situated,

Plaintiff,

vs.

MOBILE-MED WORK HEALTH
SOLUTIONS, INC.; and DOES 1 thru 50,
inclusive,

Defendants.

Case No. 23CV410264

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

Hearing Date: August 28, 2024
Hearing Time: 1:30 p.m.

Judge: Hon. Theodore C. Zayner
Dept.: 19

Action Filed: January 19, 2023
Trial Date: Not set

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1 **I. INTRODUCTION**

2 Plaintiffs Gina Martinez, Ismael Ortega, and Jessica Saelor (“Plaintiffs”) will move for an order:
3 (1) preliminarily approving the proposed settlement of this class action with Defendant Mobile-Med
4 Work Health Solutions, Inc. (“Defendant”); (2) for settlement purposes only, conditionally certifying
5 the Class, which is comprised of “all on-exempt employees who are employed or have been employed
6 by Defendant in California at any time during the Class Period”, which is January 1, 2019 through June
7 13, 2024; (3) provisionally appointing Plaintiff as the representatives of the Class; (4) provisionally
8 appointing Blumenthal Nordrehaug Bhowmik De Blouw LLP, Kingsley & Kingsley, APC, and Aegis
9 Law Firm, PC as Class Counsel for the Class; (5) approving the form and method for providing notice
10 to the Class of the proposed settlement; (6) directing that notice of the proposed settlement be given to
11 the Class; (7) appointing ILYM Group, Inc. as the Administrator; and (8) scheduling a final approval
12 hearing date for January 22, 2025 to consider the Plaintiffs’ motion for final approval of the settlement
13 and for approval of attorneys’ fees, expenses and the service awards. Plaintiffs and Defendant have
14 reached a full and final settlement of the above-captioned action, which is set forth in the Class Action
15 and PAGA Settlement Agreement (the “Agreement”) filed concurrently with the Court.¹ A copy of the
16 fully executed Agreement is attached as Exhibit #1 to the Declaration of Kyle Nordrehaug (“Decl.
17 Nordrehaug”), served and filed herewith, and the form of the Agreement is based on the Los Angeles
18 Superior Court model form for class and PAGA settlements.

19 As consideration for this Settlement, the Gross Settlement Amount is One Million Two Hundred
20 Thousand Dollars (\$1,200,000) to be paid by Defendant, as set forth in the Agreement. The Gross
21 Settlement Amount will settle all issues pending in the Action between the Parties and will be made in
22 full and final settlement of the released claims. The Gross Settlement Amount includes all payments
23 of Individual Class Payments to the Participating Class Members, the Administration Expenses Payment
24 to the Administrator, the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment
25 to Class Counsel, the Class Representative Service Payments to Plaintiffs, and the PAGA Penalties
26 payment to the California Labor and Workforce Development Agency (the “LWDA”) and the
27 _____

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

1 Aggrieved Employees. The Gross Settlement Amount does not include the employer's share of payroll
2 taxes which will be separately paid by Defendant. The Settlement is all-in with no reversion to
3 Defendant and no need for Class Members to submit claim forms. Decl. Nordrehaug at ¶3. The
4 following is a table of the key financial terms of the Settlement and the proposed deductions:

5 **\$1,200,000 (Gross Settlement Amount)**

- 6 - \$37,500 (Plaintiffs' proposed service awards not to exceed \$12,500 each)
- 7 - \$45,000 (Class Counsel Litigation Expenses - not to exceed \$15,00 per firm)
- 8 - \$400,000 (Class Counsel Fees Payment - not to exceed one-third of settlement)
- 9 - \$25,000 (PAGA Penalties - 75% to LWDA / 25% to Aggrieved Employees)
- 10 - \$19,745 (Administration Expenses Payment - not to exceed amount)

11 **\$672,755 (Net Settlement Amount)**

12 Based upon 1,569 Class Members who collectively worked 36,687 Workweeks (Agreement at ¶ 4.1),
13 the Gross Settlement Amount provides a value of \$764 per Class Member and \$32 per Workweek and,
14 after deductions, the Net Settlement Amount provides an average recovery of \$428.77 per Class
15 Member and \$18.33 per Workweek. Decl. Nordrehaug at ¶6.

16 On December 13, 2023, the Parties participated in an all-day mediation session presided over
17 by Tripper Ortman, Esq., a respected and experienced mediator of wage and hour class actions.
18 Following this mediation, the Parties reached an agreement to settle the Action. Decl. Nordrehaug at
19 ¶5. The Settlement is fair, reasonable and adequate, and should be preliminarily approved because there
20 is a substantial monetary payment, and there are substantial litigation and class-certification risks.
21 Therefore, Plaintiff respectfully requests that this Court grant preliminary approval of the Agreement
22 and enter the proposed order submitted herewith.

23 **II. DESCRIPTION OF THE SETTLEMENT**

24 The Gross Settlement Amount is One Million Two Hundred Thousand Dollars (\$1,200,000).
25 (Agreement at ¶ 1.22.) Under the Settlement, the Gross Settlement Amount consists of the following
26 elements: (i) all Individual Class Payments and Individual PAGA Payments; (ii) the LWDA PAGA
27 Payment; (iii) the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment;
28 (iv) the Class Representative Service Payments; and (v) the Administration Expenses Payment.
(Agreement at ¶ 1.22.) The Gross Settlement Amount does not include Defendant's share of payroll
taxes. (Agreement at ¶ 3.1.) The Gross Settlement Amount shall be all-in with no reversion to
Defendant. (Agreement at ¶ 3.1.) Decl. Nordrehaug at ¶15.

1 Within sixty (60) days of the Effective Date, Defendant shall deposit the Gross Settlement
2 Amount with the Administrator. (Agreement at ¶ 4.3.) The distribution of Individual Class Payments
3 to Participating Class Members along with the other Court-approved distributions shall be made by the
4 Administrator within fourteen (14) days after Defendant fully funds the Gross Settlement Amount.
5 (Agreement at ¶ 5.1.) Decl. Nordrehaug at ¶16.

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

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

25 A Participating Class Member must cash the check for his or her Individual Class Payment (and,
26 if applicable, Individual PAGA Payment) within 180 days after it is mailed. (Agreement at ¶ 5.2.) Any
27 settlement checks not cashed within 180 days will be voided and any funds represented by such checks
28 will be allocated as follows: twenty five percent (25%) to the State Treasury for deposit in the Trial

1 Court Improvement and Modernization Fund established in Section 77209 of the Government Code,
2 and subject to appropriation in the annual Budget Act for the Judicial Council to provide grants to trial
3 courts for new or expanded collaborative courts or grants for Sargent Shriver Civil Counsel; and
4 Seventy-Five percent (75%) to Free To Thrive, a nonprofit organization helping survivors of human
5 trafficking by providing restorative justice by expunging their criminal records to enable them to
6 become gainfully employed and rejoin the community ("Cy Pres Recipient"). (Agreement at ¶ 5.4.)
7 Decl. Nordrehaug at ¶19.

8 Subject to Court approval, the Parties have agreed on ILYM Group, Inc. to administer the
9 settlement in this action (the "Administrator"). (Agreement at ¶ 1.2.) The Administrator will be paid
10 for settlement administration in an amount not to exceed \$19,745. (Agreement at ¶ 3.2(c).) Decl.
11 Nordrehaug at ¶20. A Declaration from ILYM Group is submitted herewith.

12 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
13 to exceed one-third of the Gross Settlement Amount as the Class Counsel Fees Payment. (Agreement
14 at ¶ 3.2(b).) Class Counsel will also be allowed to apply for an award of Class Counsel Litigation
15 Expenses Payment in an amount not to exceed \$45,000 (not to exceed \$15,000 per firm). (Agreement
16 at ¶3.2(b).) Subject to Court approval, the Agreement provides for a payment of no more than \$12,500
17 each to Plaintiffs as the Class Representative Service Payments. (Agreement at ¶ 3.2(a).) Decl.
18 Nordrehaug at ¶21.

19 Subject to Court approval, Twenty-Five Thousand Dollars (\$25,000) will be paid from the Gross
20 Settlement Amount in settlement of Plaintiffs' claim for civil penalties under the California Labor Code
21 Private Attorneys General Act ("PAGA"), Cal. Labor Code Section 2698, *et seq.* Pursuant to the
22 express requirements of Labor Code § 2699(i), the PAGA Penalties payment shall be allocated as
23 follows: 75% (\$18,750) shall be allocated to the LWDA as its share of the civil penalties and 25%
24 (\$6,250) allocated to the Aggrieved Employees and distributed as Individual PAGA Payments based
25 on the number of their respective PAGA Pay Periods. (Agreement at ¶ 3.2(d).) As set forth in the
26 accompanying proof of service, the LWDA has been served with this motion and the Agreement. Decl.
27 Nordrehaug at ¶22.

1 **III. CASE BACKGROUND**

2 The description of the case and claims, along with the procedural history, is set forth in the
3 Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and an
4 informal exchange of documents, information, and data in connection with the Action which permitted
5 Class Counsel to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and 14. The
6 Parties participated in private mediation on December 13, 2023 with Tripper Ortman, Esq., which after
7 arm's length negotiations, resulted in this Settlement. Decl. Nordrehaug, ¶12.

8 **IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO**
9 **GRANT PRELIMINARY APPROVAL**

10 When a proposed class-wide settlement is reached, the settlement must be submitted to the court
11 for approval. 2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) at §11.41, p.11-87.
12 California "[p]ublic policy generally favors the compromise of complex class action litigation."
13 *Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 581 (2010) quoting *Cellphone Termination Fee*
14 *Cases*, 180 Cal.App.4th 1110, 1117-18 (2009). Class action settlements are approved where the
15 proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
16 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982), *cert.*
17 *denied*, 459 U.S. 1217 (1983)).

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

24 The primary question presented on an application for preliminary approval of a proposed class
25 action settlement is whether the proposed settlement is "within the range of possible approval." *Manual*
26 *for Complex Litigation, Second* §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir.

1 1982).² Preliminary approval is merely the prerequisite to giving notice so that “the proposed
2 settlement... may be submitted to members of the prospective Class for their acceptance or rejection.”
3 *Sayaman v. Baxter Healthcare Corp.*, 2010 U.S. Dist. LEXIS 151997, *3 (C.D. Cal. 2010). There is
4 “a presumption of fairness . . . where . . . [a] settlement is reached through arms-length bargaining.”
5 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 245 (2001) (citation omitted); *see also Cho v.*
6 *Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th 734, 742-45 (2009) (upholding trial court's
7 determination that settlement was “fair, reasonable and adequate” where the settlement “provided
8 valuable benefits to the class . . . that were ‘particularly valuable in light of the risks plaintiff would have
9 faced if she proceeded to litigate her case.’”); *Newberg*, 3d Ed., §11.41, p.11-88. However, the ultimate
10 question of whether the proposed settlement is fair, reasonable and adequate is made after notice of the
11 settlement is given to the class members and a final settlement hearing is held by the Court.

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

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

20 In considering a potential settlement for preliminary approval purposes, the trial court need not
21 reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute,
22 and need not engage in a trial on the merits. *Wershba, supra*, 91 Cal.App.4th at 239-40; *Dunk, supra*,
23 48 Cal.App. 4th at 1807. The Ninth Circuit explains, “the very essence of a settlement is compromise,
24 ‘a yielding of absolutes and an abandoning of highest hopes.’” *Officers for Justice*, 688 F.2d at 624.

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

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

8 With regard to class action settlements, the opinions of counsel should be given considerable
9 weight in light of their familiarity with the litigation and previous experience with similar cases.
10 *Officers for Justice*, 688 F.2d at 625; *In re Wash. Public Power Supply System Sec. Litig.*, 720 F. Supp.
11 1379, 1392 (D. Ariz. 1989); *Kirkorian v. Borelli*, 695 F. Supp. 446, 451 (N.D. Cal. 1988); *Weinberger*,
12 698 F.2d at 74. “The recommendations of plaintiffs’ counsel should be given a presumption of
13 reasonableness.” *Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 622 (N.D. Cal. 1979). As a result, courts
14 hold that the recommendation of counsel is entitled to significant weight. *Nat’l Rural Telecomms.*
15 *Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004).

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

17 A number of factors are to be considered in evaluating a settlement for purposes of preliminary
18 approval. In determining whether to grant preliminary approval, the court considers whether “(1) the
19 proposed settlement appears to be the product of serious, informed, non-collusive negotiations, (2) has
20 no obvious deficiencies, (3) does not improperly grant preferential treatment to class representatives
21 or segments of the class, and (4) falls within the range of possible approval.” *In re Tableware Antitrust*
22 *Litig.*, 484 F.Supp. 2d 1078, 1079 (N.D. Cal. 2007). Courts hold that “a presumption of fairness exists
23 where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery
24 are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
25 litigation; and (4) the percentage of objectors is small.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.
26 App. 4th 116, 128 (2008). Here, the Settlement meets all of these criteria for preliminary approval, and
27 therefore, the presumption applies.
28

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

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

8 Class Counsel are experienced and qualified to evaluate the class claims, the defenses asserted,
9 and the risks and benefits of trial and settlement, and Class Counsel are particularly experienced in wage
10 and hour employment class actions, as Class Counsel has previously litigated and certified similar
11 claims against other employers. Decl. Nordrehaug at ¶31; Declaration of Kelsey Szamet at ¶¶ 5-10;
12 Declaration of Lisa Iturriaga at ¶¶ 3-15. The view of qualified and well-informed counsel that a class
13 action settlement is fair, adequate, and reasonable is entitled to significant weight. *See Kullar v. Foot*
14 *Locker*, 168 Cal. App. 4th 116, 133 (2008) (the trial court "undoubtedly should continue to place
15 reliance on the competence and integrity of counsel, the involvement of a qualified mediator, and the
16 paucity of objectors to the settlement."); *Dunk*, 48 Cal. App. 4th at 1802.

17 The Parties attended an arms-length mediation session with Tripper Ortman, a respected and
18 experienced mediator of wage and hour class actions, to reach the Settlement. In preparation for the

19 ³ The release applicable to the Class is tethered to allegations in the Action as the “Released Class
20 Claims” are “all claims alleged, or could have been alleged, based facts stated in the Operative
21 Complaint, which arose during the Class Period, including all claims and/or causes of action under any
22 federal, state, local law or administrative order that were or which could have been plead based on the
23 facts alleged in the operative class action complaint, whether known or unknown, including the failure
24 to pay wages, the failure to pay overtime compensation, the failure to provide meal periods, the failure to
25 provide rest periods, the failure to maintain or provide accurate itemized statements, the failure to
26 maintain records, the failure to timely pay wages, the failure to pay wages due to discharged or quitting
27 employees, the failure to reimburse for necessary business expenses, the failure to provide suitable
28 seating, the failure to pay sick wages, and any other claims whatsoever that were or could have been
alleged in this case, including all reasonably related claims for restitution and other equitable relief
under Business and Professions Code § 17200, the Fair Labor Standards Act, 29 U.S.C. sections 201,
et seq. conversion, liquidated damages, punitive damages, and waiting-time penalties. The Released
Class Claims exclude all other claims for vested non-wage benefits, wrongful termination, violation of
the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers'
compensation, and California class claims outside of the Class Period.” (Agreement at ¶¶ 1.38 and 6.2.)

1 mediation, Defendant provided Class Counsel with necessary information, including the Class payroll
2 and timekeeping data. Plaintiff analyzed the data with the assistance of a damages expert, Berger
3 Consulting, and prepared and submitted a mediation brief and damage valuation to the Mediator.
4 Following the all-day mediation, the Parties agreed to the Settlement, which was memorialized in the
5 form of a Memorandum of Understanding. The final terms of the Settlement were negotiated and set
6 forth in the Agreement now presented for this Court's approval. Decl. Nordrehaug at ¶ 5. Importantly,
7 Plaintiffs and Class Counsel believe that this Settlement is fair, reasonable and adequate.

8 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant is
9 One Million Two Hundred Thousand Dollars (\$1,200,000). The Settlement is all-in with no reversion
10 to Defendant and no need for Class Members to submit claim forms. Decl. Nordrehaug at ¶3.

11 Class Counsel has conducted a thorough investigation into the facts of the class action. Over
12 the course of more than a year, Class Counsel diligently evaluated the Class Members' claims against
13 Defendant. Prior to the settlement negotiations, counsel for Defendant provided Class Counsel with
14 access to necessary documents and information for the Class. In addition, Class Counsel has previously
15 negotiated settlements with other employers in actions involving nearly identical issues and analogous
16 defenses. Based on the informal discovery and their own independent investigation, evaluation and
17 experience, Class Counsel believes that the settlement with Defendant on the terms set forth in the
18 Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known
19 facts and circumstances, including the risk of significant delay, the risk that the claims would not be
20 allowed to proceed on a class or representative basis, the defenses asserted by Defendant, and potential
21 appellate issues. Decl. Nordrehaug at ¶ 14.

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

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

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

8 The proposed Settlement has no "obvious deficiencies" and is well within the range of possible
9 approval. All Class Members will receive an opportunity to participate in the Settlement and receive
10 payment according to the same formula. (Agreement at ¶ 3.2(e).) Based upon 1,569 Class Members
11 who collectively worked 36,687 Workweeks (Agreement at ¶ 4.1), the Gross Settlement Amount
12 provides a value of \$764 per Class Member and \$32 per Workweek and, after deductions, the Net
13 Settlement Amount provides an average recovery of \$428.77 per Class Member and \$18.33 per
14 Workweek. Decl. Nordrehaug, ¶6.

15 The calculations to compensate for the amount due to the Class Members at the time the
16 Settlement was negotiated were calculated by Plaintiffs’ expert, Berger Consulting, in advance of
17 mediation. Class Counsel analyzed the data for putative class members and determined the potential
18 maximum damages for the class claims. For the Class, the maximum value of the claim for unpaid
19 wages due to the alleged miscalculation of the regular rate applicable to overtime pay was \$2,803, the
20 maximum value of the claim for unpaid wages due to the alleged miscalculation of the regular rate
21 applicable to sick pay and meal premiums was \$2,591, the maximum potential damages for alleged off-
22 the-clock work at one half hour per week was \$483,219, the maximum potential damages for alleged
23 meal period violations were estimated to be \$344,990 based upon a 19.7% violation rate observed in
24 the time records and after deduction of meal premiums (\$468,602) already paid by Defendant, the
25 maximum potential damages for alleged rest period violations were estimated to be \$966,438 based
26 upon a similar one violation per week rate, and the maximum potential damages for the alleged failure
27 to reimburse business expenses were calculated to be \$187,950 based upon \$20 per month. In total, the
28 damages for the Class were calculated to have a maximum potential total value of \$1,987,991. In

1 addition, Plaintiff calculated that the maximum value of the potential waiting time penalties were
2 \$7,466,125 if applied to all 1,292 terminated employees, and the maximum value of the potential wage
3 statement penalties were between \$86,650 and \$1,876,250, depending on the predicate violation.⁴ Decl.
4 Nordrehaug, ¶6.

5 Consequently, the Gross Settlement Amount represents more than 60% of Plaintiffs' calculation
6 of the potential maximum damages at issue for the Class in this case, assuming these amounts could
7 all be proven in full at trial.⁵ Importantly, the recent decision that good faith belief of compliance by
8 the employer in *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065 (2024), could completely
9 negate the claims for waiting time and wage statement penalties, even if wages were owed to the class.
10 The maximum calculations should then be realistically risk rated in consideration for both the risk of
11 class certification and the risk of establishing class-wide liability on all claims. Given the amount of the
12 Settlement as compared to the potential value of the claims, the Settlement is most certainly fair and
13 reasonable.⁶ Clearly, the goal of this litigation has been met. Decl. Nordrehaug, ¶6.

14 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
15 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
16

17 ⁴ While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
18 226, at mediation Plaintiffs recognized that these claims were subject to additional, separate defenses
19 asserted by Defendant, including but not limited to, a good-faith dispute defense as to whether any
20 premium wages for meal or rest periods or other wages were owed given Defendant's position that
21 Plaintiffs and Class Members were properly compensated. See *Nordstrom Commission Cases*, 186 Cal.
22 App. 4th 576, 584 (2010) ("There is no willful failure to pay wages if the employer and employee have
23 a good faith dispute as to whether and when the wages were due.").

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

27 ⁶ See *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)
28 approving settlement which represented "roughly one-sixth of the potential recovery"); *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 verdict value); *Ma*
v. Covidien Holding, Inc., 2014 WL 2472316, (C.D. Cal. 2014) (approving wage and hour class action
settlement worth "somewhere between 9% and 18%" of full verdict value).

1 Defendant present serious threats to the claims of the Plaintiffs and the other Class Members.
2 Defendant maintains that its practices complied with all applicable wage and hour laws. Defendant
3 maintains that all Class Members' work time was properly recorded and compensated and that there was
4 no miscalculation of the regular rate. Defendant contends that its meal and rest period policies and
5 practices provide Class Members with meal and rest periods and could argue that the payment of
6 significant meal premiums is evidence of Defendant's legal compliant practices. As to expense
7 reimbursement, Defendant maintains that it did not fail to provide reimbursement for necessary business
8 expenses because, among other things, the alleged expenses were convenient and voluntary, and
9 therefore not were required expenses giving rise to reimbursement. Defendant could argue that the
10 decisions in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), *Lockheed Martin Corp. v. Superior*
11 *Ct.*, 29 Cal. 4th 1096, 1108 (2003), and *Salazar v. See's Candy Shops Inc.*, 64 Cal.App.5th 85 (2021),
12 weakened Plaintiffs' claims in terms of liability and value, and preclude claims from proceeding on a
13 class or representative basis. Defendant also maintains that a good faith dispute and absence of
14 willfulness would negate the claims for waiting time penalties and/or failure to provide accurate
15 itemized wage statements. See e.g. *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065
16 (2024) ("if an employer reasonably and in good faith believed it was providing a complete and accurate
17 wage statement in compliance with the requirements of section 226, then it has not knowingly and
18 intentionally failed to comply with the wage statement law.") If successful, Defendant's defenses could
19 eliminate or substantially reduce any recovery to the Class. While Plaintiffs believe that these defenses
20 could be overcome, Defendant maintains these defenses have merit and therefore present a serious risk
21 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 class certification and thereby not recover on behalf of any employees other than themselves
24 Defendant argued that the individual experience of each putative class member varied with respect to
25 the claims, which would preclude the claims from proceeding on a class basis. For instance, Plaintiffs'
26 meal and rest period claims would require individualized inquiries into whether each employee took
27 a compliant meal or rest period on a given shift and, if not, why. Plaintiffs are aware of other cases
28 where class certification of similar claims was denied. See e.g. *Cacho v. Eurostar, Inc.*, 43 Cal. App.

1 5th 885 (2019) (denying certification of rest break claims). Defendant also argued that the existence
2 of arbitration agreements would bar and/or limit class certification. Finally, even if class certification
3 was successful, as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank*
4 *National Association*, 59 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class-wide
5 recovery even where a class has been certified. While other cases have approved class certification of
6 wage and hour claims, class certification in this Action would have been hotly disputed and was by no
7 means a foregone conclusion. Decl. Nordrehaug, ¶ 25.

8 After arm's-length negotiations between experienced and informed counsel, the Parties
9 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of
10 \$1,200,000.00. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

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

17 2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
18 (9th Cir. 2000)).

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

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

26 Plaintiffs will apply to the Court for Class Representative Service Payments in consideration
27 for their service and for the risks undertaken on behalf of the Class. (Agreement at ¶ 3.2(a).) Plaintiffs
28 performed their duties admirably by working with Class Counsel. Decl. Nordrehaug at ¶27. The
concurrently filed declarations of the Plaintiffs are presented herewith in support of the request. For
purposes of this preliminary approval stage, the not to exceed amount is well within the accepted range
of awards for purposes of preliminary approval, subject to the Court's final determination of the amount

1 at final approval. *See, e.g., Andrews v. Plains All Am. Pipeline L.P.*, 2022 U.S. Dist. LEXIS 172183,
2 at *11 (C.D. Cal. 2022) (finding that the requested service awards of \$15,000 each are appropriate);
3 *Reynolds v. Direct Flow Med., Inc.*, 2019 U.S. Dist. LEXIS 149865, at *19 (N.D. Cal. 2019) (granting
4 request for \$12,500 service award); *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386
5 (E.D. Cal. 2018) (awarding \$12,500 where average class member payment was \$351); *Louie v. Kaiser*
6 *Foundation Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D. Cal. Oct. 06, 2008) (awarding \$25,000
7 service award to each of six plaintiffs in overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL
8 221862, *16-17 (N.D. Cal. 2007) (awarding \$25,000 service award in overtime class action and a pool
9 of \$100,000 in enhancements). As explained in *Glass*, service awards are routinely awarded to class
10 representatives to compensate them for the time and effort expended on the case, for the risk of
11 litigation, for the fear of suing an employer and retaliation therefrom, and to serve as an incentive to
12 vindicate the statutory rights of all employees. 2007 WL 221862 at *16-17.

13 **4. The Stage Of The Proceedings Are Sufficiently Advanced To Permit**
14 **Preliminary Approval Of The Settlement.**

15 The stage of the proceedings at which the Settlement was reached also militates in favor of
16 preliminary approval and, ultimately, final approval of the Settlement. Class Counsel has conducted
17 a thorough investigation into the facts of the class action. Class Counsel began investigating the Class
18 Members' claims before the Action was filed. Class Counsel engaged in an investigation of the claims
19 and conducted a review and analysis of the relevant documents and data. Class Counsel was also
20 experienced with the claims at issue here, as Class Counsel previously litigated and settled similar
21 claims in other actions. Accordingly, the agreement to settle did not occur until Class Counsel
22 possessed sufficient information to make an informed judgment regarding the likelihood of success on
23 the merits and the results that could be obtained through further litigation. Decl. Nordrehaug at ¶28.

24 Based on the informal discovery of data and documents, and their own independent investigation
25 and evaluation, Class Counsel is of the opinion that the Settlement with Defendant for the consideration
26 and on the terms set forth in the Agreement is fair, reasonable, and adequate and is in the best interest
27 of the Class in light of all known facts and circumstances, including the risk of significant delay,
28 defenses asserted by Defendant, and numerous potential appellate issues. There can be no doubt that

1 counsel for both Parties possessed sufficient information to make an informed judgment regarding the
2 likelihood of success on the merits and the results that could be obtained through further litigation.
3 Decl. Nordrehaug at ¶29.

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

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

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

16 All non-exempt employees who are employed or have been employed by Defendant in
17 California at any time during the Class Period.

18 (Agreement at ¶ 1.5.)

19 The “Class Period” is from January 1, 2019 through June 13, 2024. (Agreement at ¶ 1.13.)

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

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

23 Code of Civil Procedure Section 382 authorizes class actions “when the question is one
24 of a common or general interest, of many persons, or when the parties are numerous, and
25 it is impracticable to bring them all before the court....” The party seeking certification
26 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.

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

28 Plaintiffs contend that the proposed Class satisfies the criteria for certification under Code of

1 Civil Procedure section 382. Defendant disputes that Plaintiffs can satisfy any of these requirements
2 for class certification in the litigation context, but does not oppose certification for purposes of the
3 Settlement. Accordingly, the proposed Class should be certified for purposes of the Settlement only.
4 (Agreement at ¶ 2.12.)

5 **1. Ascertainability And Numerosity.**

6 Plaintiffs bring this Action on behalf of a Class of non-exempt employees who worked for
7 Defendant during the applicable Class Period. Plaintiffs assert that all of these individuals are
8 ascertainable because the class members can readily be determined through examination of Defendant's
9 files. Given that the Class consists of approximately 1,569 members, Plaintiffs maintain that
10 numerosity is clearly satisfied. *See Bowles v. Superior Court*, 44 Cal.2d 574 (1955) (class with 10
11 members sufficiently numerous); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of
12 48 members satisfies numerosity requirement.) Here, Plaintiffs assert that the 1,569 individuals who
13 comprise the Class can be identified based on Defendant's records and are sufficiently numerous for
14 class certification. Decl. Nordrehaug at ¶30.

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

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

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

27 Here, Plaintiffs contend that common questions of law and fact are present, and specifically the
28 common questions of whether Defendant's practices were lawful, whether Class members were lawfully

1 compensated for all hours worked, whether Defendant properly calculated wages, whether the
2 Defendant failed to provide all legally required meal and rest periods to Class Members, whether
3 Defendant failed to provide required expense reimbursement, and whether Class Members are entitled
4 to damages and penalties as a result of these alleged practices. Decl. Nordrehaug, ¶30.

5 **3. Typicality.**

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

12 In the Action, Plaintiffs contend that there can be little doubt that the typicality requirement is
13 satisfied. Plaintiffs worked for Defendant as non-exempt employee during the Class Period. Plaintiffs
14 contend that, like every other member of the Class, they was subjected to the same practices and
15 policies of Defendant and is subject to the same defenses. Thus, Plaintiffs assert that the claims of
16 Plaintiffs and the Class Members arise from the same course of conduct by the Defendant, involve the
17 same employment policies and practices of Defendant, and are based on the same legal theories. Decl.
18 Nordrehaug at ¶30. For purposes of settlement, Plaintiffs maintain that the typicality requirement is met
19 as to the common issues presented in this case.

20 **4. Adequacy.**

21 Plaintiffs contend that the Class Members are adequately represented here because Plaintiffs and
22 Class Counsel (a) do not have any conflicts of interest with other Class members, and (b) will prosecute
23 the case vigorously on behalf of the Class. *Hanlon*, 150 F.3d at 1020. First, Plaintiffs are well aware
24 of their duties as the representatives of the Class and have actively participated in the prosecution of this
25 case to date. Plaintiffs effectively communicated with counsel, provided documents to counsel, and
26 participated in the investigation and negotiations in the Action. Second, Plaintiffs retained competent
27 counsel who are experienced in employment class actions and who have no conflicts. Decl. Nordrehaug
28 at ¶ 31; Declaration of Kelsey Szamet at ¶¶ 5-10; Declaration of Lisa Iturriaga at ¶¶ 3-15. Third, there

1 is no antagonism between the interests of the Plaintiffs and those of the Class. Both Plaintiffs and the
2 Class Members seek monetary relief under the same set of facts and legal theories.

3 **5. Superiority.**

4 To certify a class, a court also must determine that a class action is superior to other available
5 methods for the fair and efficient adjudication of the controversy. “Where classwide litigation of
6 common issues will reduce litigation costs and promote greater efficiency, a class action may be
7 superior to other methods of litigation.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir.
8 1996). As courts have previously observed:

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

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

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

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

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

28 The Class Notice, drafted jointly and agreed upon by the Parties through their respective counsel
and to be approved by the Court, includes all relevant information. (*See Exhibit “A”* to the Agreement.)
The Class Notice will include, among other information: (i) information regarding the Action; (ii) the

1 impact on the rights of the Class Members if they do not opt out, including a description of the
2 applicable release; (iii) information to the Class Members regarding how to opt out and how to object
3 to the Settlement; (iv) the estimated Individual Class Payment (and, if applicable, Individual PAGA
4 Payment) for each of the Class Members and how to dispute the information used to calculate the
5 payment; (iii) the amount of attorneys' fees and expenses to be sought; (v) the amount of the Plaintiffs'
6 service award request; and (vi) the anticipated expenses of the Administrator. Decl. Nordrehaug at ¶32.

7 The Class Notice will state that the Class Members shall have forty-five (45) days from the date
8 that the Notice is mailed to them (the "Response Deadline") to request exclusion (opt-out), and that the
9 Response Deadline shall be extended 14 days in the event of a re-mailing. (Agreement at ¶¶ 1.42,
10 8.5(a).) Class Members shall be given the opportunity to object to the Settlement and/or requests for
11 attorneys' fees and expenses and to appear at the Final Approval Hearing. (Agreement at ¶ 8.7.) Class
12 Members who do not submit a timely and proper request to opt out will automatically receive a payment
13 of their Individual Class Payment (and, if applicable, their Individual PAGA Payment). This notice
14 program was designed to meaningfully reach the Class Members and it advises them of all pertinent
15 information concerning the Settlement. Decl. Nordrehaug at ¶32. The mailing and distribution of the
16 Class Notice satisfies the requirements of due process, is the best notice practicable under the
17 circumstances, and complies with Rules of Court 3.766 and 3.769(f).

18 VII. CONCLUSION

19 Based on the foregoing, Plaintiff respectfully requests that the Court preliminarily approve the
20 proposed settlement and sign the proposed Preliminary Approval Order, which is submitted herewith,
21 and schedule the final approval hearing for January 22, 2025.

22 Dated: August 2, 2024

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

23 By: /s/ Kyle Nordrehaug
24 Kyle R. Nordrehaug, Esq.
25 Attorney for Plaintiffs
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