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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

JONATHAN MOORE, an individual, on
behalf of himself and on behalf of all persons
similarly situated,

Plaintiffs,

vs.

BYER CALIFORNIA, a California
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO.: **CGC-23-605878**

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

Hearing Date: May 15, 2025
Hearing Time: 9:30 a.m.

Judge: Hon. Richard B. Ulmer
Courtroom: 302

Action Filed: April 17, 2023
Trial Date: Not set

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1 **I. INTRODUCTION**

2 Plaintiff Jonathan Moore (“Plaintiff”) respectfully submit this memorandum in support of the
3 motion for preliminary approval of the proposed class action settlement with Defendant Byer California
4 (“Defendant”), and seek entry of an order: (1) preliminarily approving the proposed settlement of this
5 class action with Defendant; (2) for settlement purposes only, conditionally certifying the Class, which
6 is comprised of “all individuals who were employed by Defendant in California and classified as
7 non-exempt employees at any time during the Class Period”, which is April 17, 2019 to October 14,
8 2024; (3) provisionally appointing Plaintiff as the representatives 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 September 30, 2025 to consider Plaintiff’s motion for final approval of the settlement and
14 for approval of attorneys’ fees and expenses. Plaintiff and Defendant (collectively the “Parties”) have
15 reached a full and final settlement of the above-captioned action, which is set forth in the Class Action
16 and PAGA Settlement Agreement between the Parties (“Agreement”) filed concurrently with the
17 Court.¹ A copy of the fully executed Agreement is attached as Exhibit #1 to the Declaration of Kyle
18 Nordrehaug (“Decl. Nordrehaug”), served and filed herewith. The form of the Agreement is based upon
19 the Los Angeles County Superior Court model form for a class and PAGA settlement.

20 As consideration for this Settlement, the non-reversionary Gross Settlement Amount of One
21 Million Five Hundred Thousand Dollars (\$1,500,000) (the “Gross Settlement Amount”) is to be paid
22 by Defendant, as set forth in the Agreement. The Gross Settlement Amount will settle all issues
23 pending in the Action between the Parties and will be made in full and final settlement of the Released
24 Class Claims in exchange for the payments to Participating Class Members from the Net Settlement
25 Amount, and includes (a) the costs of administration of the settlement, (b) all attorneys' fees and costs,
26 (c) the Class Representative Service Payment, and (d) the PAGA Penalties payment allocated 75% to
27

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

the LWDA and 25% to the Aggrieved Employees. (Agreement at ¶ 1.22.) Decl. Nordrehaug at ¶3. The following is a table of the key Settlement terms and the proposed deductions:

\$1,500,000	(Gross Settlement Amount)
- \$15,000	(Plaintiff's proposed service award - not to exceed amount)
- \$25,000	(Class Counsel Litigation Expenses Payment - not to exceed amount)
- \$500,000	(Class Counsel Fees Payment - not to exceed 33.3% of settlement)
- \$50,000	(PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
- \$14,000	(Administration Expenses Payment - not to exceed amount)
\$896,000	(Net Settlement Amount)

Based upon 1,000 Class Members who worked an estimated 53,500 work weeks (Agreement at ¶ 4.1), the Gross Settlement Amount provides an average value of \$1,500 per Class Member and \$28 per workweek and after deductions the Net Settlement Amount provides an average recovery of \$896 per Class Member and a recovery \$16.74 per workweek. Decl. Nordrehaug at ¶6.

On August 14, 2024, the Parties participated in an all-day mediation session presided over Hon. Carl J. West (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 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 Five Hundred Thousand Dollars (\$1,500,000). (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.

The Agreement contains appropriate terms which have been previously approved by this Court

1 and Courts throughout California. (See Agreement at ¶¶ 1.28, 3.2, 4.3, 5.1.) The proposed Class
2 Notice also provides the required protections for the Class to opt out, object or dispute their weeks
3 worked. (See Agreement at ¶¶ 8.5, 8.6, 8.7, and Exhibit A.) The additional details of the Settlement
4 are addressed in the Decl. Nordrehaug at ¶¶ 16-22. As set forth in the accompanying proof of service,
5 the LWDA has been served with this motion and the Agreement.

6 **III. CASE BACKGROUND**

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

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

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

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

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

1 *for Complex Litigation*, Second §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir.
2 1982).² Preliminary approval is merely the prerequisite to giving notice so that “the proposed
3 settlement... may be submitted to members of the prospective Class for their acceptance or rejection.”
4 *Sayaman v. Baxter Healthcare Corp.*, 2010 U.S. Dist. LEXIS 151997, *3 (C.D. Cal. 2010). There is
5 “a presumption of fairness . . . where . . . [a] settlement is reached through arms-length bargaining.”
6 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 245 (2001) (citation omitted); see also *Cho v.*
7 *Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th 734, 742-45 (2009) (upholding trial court’s
8 determination that settlement was “fair, reasonable and adequate” where the settlement “provided
9 valuable benefits to the class . . . that were ‘particularly valuable in light of the risks plaintiff would have
10 faced if she proceeded to litigate her case.’”); *Newberg*, 3d Ed., §11.41, p.11-88. However, the ultimate
11 question of whether the proposed settlement is fair, reasonable and adequate is made after notice of the
12 settlement is given to the class members and a final settlement hearing is held by the Court.

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

14 The approval of a proposed settlement of a class action suit is a matter within the broad
15 discretion of the trial court. *Wershba, supra*, 91 Cal.App.4th at 234-235; *Dunk*, 48 Cal.App.4th 1794.
16 In considering a potential settlement for preliminary approval purposes, the trial court does not have
17 to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute,
18 and need not engage in a trial on the merits. *Wershba, supra*, 91 Cal.App.4th at 239-40; *Dunk, supra*,
19 48 Cal.App. 4th at 1807. The Ninth Circuit explained that, “the very essence of a settlement is
20 compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” *Officers for Justice*, 688
21 F.2d at 624. Thus, when analyzing the settlement, the amount is “not to be judged against a
22 hypothetical or speculative measure of what might have been achieved by the negotiators.” *Officers*
23 *for Justice*, 688 F.2d at 625, 628.

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

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

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

B. Factors To Be Considered In Granting Preliminarily Approval

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

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

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

Class Counsel are experienced and qualified to evaluate the class claims, the defenses asserted, and the risks and benefits of trial and settlement, and Class Counsel are particularly experienced in wage and hour employment class actions, as Class Counsel has previously litigated and certified similar claims against other employers. Decl. Nordrehaug at ¶31. The view of qualified and well-informed

1 counsel that a class action settlement is fair, adequate, and reasonable is entitled to significant weight.
2 *See Kullar v. Foot Locker*, 168 Cal. App. 4th 116, 133 (2008) (the trial court "undoubtedly should
3 continue to place reliance on the competence and integrity of counsel, the involvement of a qualified
4 mediator, and the paucity of objectors to the settlement."); *Dunk*, 48 Cal. App. 4th at 1802.

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

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

24 Here, there can be no dispute that the litigation has been hard-fought with aggressive and
25 capable advocacy on both sides. The Parties were represented by experienced and capable counsel who
26 zealously advocated their positions. Accordingly, "[t]here is likewise every reason to conclude that
27 settlement negotiations were vigorously conducted at arms' length and without any suggestion of undue
28 influence." *In re Wash. Public Power Supply Sec. Litig.*, 720 F. Supp. 1379, 1392 (D. Ariz 1989).

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

3 The proposed Settlement herein has no "obvious deficiencies" and is well within the range of
4 possible approval. All Class Members will receive an opportunity to participate in the Settlement and
5 receive payment according to the same formula. (Agreement at ¶ 3.2(e).) Based upon 1,000 Class
6 Members who worked an estimated 53,500 work weeks (Agreement at ¶ 4.1), the Gross Settlement
7 Amount provides an average value of \$1,500 per Class Member and \$28 per workweek and after
8 deductions the Net Settlement Amount provides an average recovery of \$896 per Class Member and
9 a recovery \$16.74 per workweek. Decl. Nordrehaug, ¶6.

10 The calculations to compensate for the amount due for the Class at the time of the mediation
11 were calculated by Berger Consulting, Plaintiff's damage expert. As to the Class whose claims are at
12 issue in this Action, Plaintiff used the expert to analyze the data and determine the potential unpaid
13 wages for the Class. The maximum potential damages were calculated to be \$419,638 for the alleged
14 unpaid wages for off-the-clock work due to rounding, \$13,286 for the alleged unpaid wages due to
15 miscalculation of the regular rate when paying overtime wages, \$9,002 for the alleged unpaid wages
16 due to the miscalculation of the regular rate for sick pay; \$3,090,591 for alleged meal period damages
17 based upon a 74% potential violation rate for shifts worked and after accounting for the meal premiums
18 actually paid by Defendant, \$3,254,408 for alleged rest period damages based upon the same 74%
19 potential violation rate for shifts worked, \$57,920 for alleged unreimbursed business expenses for cell
20 phone usage at \$5 per month. Decl. Nordrehaug, ¶6. As a result, the total damage valuation was
21 calculated that Defendant was subject to a maximum damage claim in the amount of \$6,844,846. As
22 to potential penalties, Plaintiff calculated that potential waiting time penalties were a maximum of
23 between \$515,857 and \$1,497,487, depending on the predicate violation giving rise to the penalty, and
24 potential maximum wage statement penalties were \$1,532,000.³ Defendant vigorously disputed

25 _____
26 ³ 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 Plaintiff's calculations and exposure theories. Decl. Nordrehaug, ¶6.

2 Consequently, the Gross Settlement Amount of \$1,500,000 represents more than 21% of the
3 maximum value of the alleged damages at issue in this case at the time this Settlement was negotiated.⁴

4 The above maximum calculations should then be adjusted in consideration for both the risk of class
5 certification and the risk of establishing class-wide liability on all claims. Given the amount of the
6 settlement as compared to the potential value of claims in this case and the defenses asserted by
7 Defendant, this settlement is fair and reasonable.⁵ Clearly, the goal of this litigation has been met.
8 Decl. Nordrehaug, ¶6.

9 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
10 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
11 Defendants\ present serious threats to the claims of the Plaintiff and the other Class Members.
12 Defendant asserted that Defendant's practices complied with all applicable Labor laws. Defendant
13 argued that Class Members were paid for all time worked, that all work time was properly recorded,
14 and that the alleged rounding was facially neutral. Defendant maintained there was no miscalculation
15 of the regular rate when paying wages to the Plaintiff and the Class. Defendant contends that its meal
16 and rest period policies fully complied with California law and that Defendant did not fail to provide
17 the opportunity for legally required meal and rest breaks. Defendant contends that there was no failure
18

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

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

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

1 to pay for business expenses and any cell phone usage was merely convenient and voluntary such that
2 reimbursement was not legally required. Defendant could argue that the Supreme Court decision in
3 *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), weakened Plaintiff's claims, on liability, value, and
4 class certifiability as to the meal and rest period claims. Defendant also argues that based on their
5 facially lawful practices, Defendant acted in good faith and without willfulness, which if accepted
6 would negate the claims for waiting time penalties and/or inaccurate wage statements. See e.g. *Naranjo*
7 *v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065 (May 6, 2024) ("if an employer reasonably and
8 in good faith believed it was providing a complete and accurate wage statement in compliance with the
9 requirements of section 226, then it has not knowingly and intentionally failed to comply with the wage
10 statement law.") Defendant's defenses could eliminate or substantially reduce any recovery to the
11 Class. While Plaintiff believes that these defenses could be overcome, Defendant maintains these
12 defenses have merit and therefore present a serious risk to recovery by the Class. Decl. Nordrehaug,
13 ¶ 24.

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

23 After arm's length negotiations between experienced and informed counsel, the Parties
24 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of
25 \$1,500,000. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

26 In light of the above-referenced uncertainty in the law, the risk, expense, complexity,
27 and likely duration of further litigation likewise favors the settlement. Regardless of
28 how this Court might have ruled on the merits of the legal issues, the losing party likely
would have appealed, and the parties would have faced the expense and uncertainty of
litigating an appeal. 'The expense and possible duration of the litigation should be

1 considered in evaluating the reasonableness of [a] settlement.’”
2 2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
3 (9th Cir. 2000)).

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

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

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

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

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

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

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

17 Plaintiff contends that the proposed settlement meet all of the requirements for class certification
18 under California Code of Civil Procedure § 382 as demonstrated below, and therefore, the Court may
19 appropriately approve the Class as defined in the Agreement. This Court should conditionally certify
20 the Class for settlement purposes only, defined as follows:

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

23 (Agreement at ¶ 1.5.)

24 The Class Period is from April 17, 2019 to October 14, 2024. (Agreement at ¶ 1.13)

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

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

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

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

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

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

15 Plaintiff brings this action on behalf of a Class of non-exempt employees of Defendant during
16 the Class Period. Plaintiff assert that all of these individuals are ascertainable because the class
17 members can readily be determined through examination of Defendants’ files. Given that the Class
18 consists of approximately 1,000 individuals, Plaintiff maintains that numerosity is clearly satisfied. *See*
19 *Bowles v. Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose*
20 *v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity
21 requirement.) Here, Plaintiff asserts that the 1,000 current and former employees that comprise the
22 Class can be identified based on Defendant’s records and are sufficiently numerous for class
23 certification. Decl. Nordrehaug at ¶30.

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

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

Commonality exists if there is a predominant common legal question regarding how an
employer’s policies impact its employees. *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524,

1 1536 (2008) (“[T]he common legal question remains the overall impact of Diva's policies on its
2 drivers.”) Whether the plaintiff is likely to prevail on their theory of recovery is irrelevant at the
3 certification stage since the question is “essentially a procedural one that does not ask whether an action
4 is legally or factually meritorious.” *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2003).

5 Here, Plaintiff contends that common questions of law and fact are present, specifically the
6 common questions of whether Defendant’s employment practices were lawful, whether Defendant
7 failed to provide meal and rest periods to Class Members, whether Class members were lawfully
8 compensated for all hours worked, whether Defendant miscalculated the regular rate when paying Class
9 Member overtime and/or sick pay, whether Defendant failed to provide required expense
10 reimbursement, and whether Class Members are entitled to damages and penalties as a result of these
11 practices. Plaintiff contends that certification of this Class is appropriate because Defendant allegedly
12 engaged in uniform practices with respect to the Class Members. As a result, these common questions
13 of liability could be answered on a class wide basis. Decl. Nordrehaug, ¶30. Defendant disputes that
14 common questions predominate but will not oppose such a finding for purposes of this Settlement only.

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

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

22 In this Action, Plaintiff contends that the typicality requirement is fully satisfied. Plaintiff, like
23 every other member of the Class, was employed by Defendants as non-exempt employee, and, like
24 every other member of the Class, was subject to the same employment practices. Plaintiff, like every
25 other member of the Class, also claim owed compensation as a result of the Defendant’s uniform
26 company policies and practices. Thus, the claims of Plaintiff and the members of the Class arise from
27 the same course of conduct by Defendant, involve the same issues, and are based on the same legal
28 theories. Decl. Nordrehaug at ¶30. For purposes of settlement, Plaintiff assert that the typicality

1 requirement is met as to the common issues presented in this case. Defendant does not oppose a finding
2 of typicality for purposes of this Settlement only.

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

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

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

20 To certify a class, the Court must also determine that a class action is superior to other available
21 methods for the fair and efficient adjudication of the controversy. “Where classwide litigation of
22 common issues will reduce litigation costs and promote greater efficiency, a class action may be
23 superior to other methods of litigation.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir.
24 1996). As courts have previously observed:

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

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

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

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

6 The Court has broad discretion in approving a practical notice program. *7-Eleven Owners for*
7 *Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1164 (2000). The Parties have agreed
8 upon procedures by which the Class Members will be provided with written notice of the Settlement
9 similar to that approved and utilized in hundreds of class action settlements and the Class Notice
10 includes all relevant information with a Spanish translation included. (See Exhibit "A" to the
11 Agreement.) Decl. Nordrehaug at ¶32. The Class Notice will explain that the Class Members shall have
12 sixty (60) days from the date that the Class Notice is mailed to them (the "Response Deadline") to
13 request exclusion (opt-out) or to submit a written objection. (Agreement at ¶¶ 1.42, 8.5, 8.7.) Class
14 Members shall be given the opportunity to object to the Settlement and/or the attorneys' fees and
15 expenses, and to appear at the Final Approval Hearing. (Agreement at ¶ 8.7.) This notice program was
16 designed to meaningfully reach the Class Members and it advises them of all pertinent information
17 concerning the Settlement. Decl. Nordrehaug at ¶32. The distribution of the Class Notice satisfies the
18 requirements of due process, is the best notice practicable under the circumstances, and complies with
19 Rules of Court 3.766 and 3.769(f).

20 **VII. CONCLUSION**

21 Plaintiffs respectfully request that the Court preliminarily approve the proposed settlement and
22 sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the final
23 approval hearing for the proposed date of September 30, 2025.

24 Dated: April 21, 2025

**BLUMENTHAL NORDREHAUG BHOWMIK
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By: /s/ Kyle Nordrehaug
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