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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

LILIANA GODINA, LISA HOWELL, and
BERT MERCADO, individually, and on
behalf of all persons similarly situated,

Plaintiff,

vs.

KAISER FOUNDATION HOSPITALS, a
California non-profit corporation, and
DOES 1 through 50, inclusive,

Defendants.

Case No. 23STCV25366

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

Hearing Date: May 5, 2025
Hearing Time: 9:30 a.m.

Judge: Hon. David S. Cunningham III
Dept: SS-11

Date Filed: October 17, 2023
Trial Date: Not set

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1 **I. INTRODUCTION**

2 Plaintiffs Lisa Howell, Bert Mercado, and Liliana Godina (“Plaintiffs”) will move for an order:
3 (1) preliminarily approving the proposed settlement of this class action with Defendant Kaiser
4 Foundation Hospitals (“Defendant”); (2) for settlement purposes only, conditionally certifying the Class,
5 which is comprised of “all non-exempt persons who were employed by Defendant in the State of
6 California at any time during the Class Period”, which is January 1, 2024 through December 31, 2024;
7 (3) provisionally appointing Plaintiffs as the representatives of the Class; (4) provisionally appointing
8 Blumenthal Nordrehaug Bhowmik De Blouw LLP and Haig B. Kazandjian Lawyers APC as Class
9 Counsel for the Class; (5) approving the form and method for providing notice to the Class of the
10 proposed settlement; (6) directing that notice of the proposed settlement be given to the Class; (7)
11 appointing ILYM Group, Inc. as the Administrator; and (8) scheduling a final approval hearing date in
12 approximately five months to consider the Plaintiffs’ motion for final approval of the settlement and
13 for approval of attorneys’ fees, expenses and the service awards. Plaintiffs and Defendant have reached
14 a full and final settlement of the above-captioned action, which is set forth in the Class and
15 Representative Action Settlement Agreement (the “Agreement”) filed concurrently with the Court.¹ A
16 copy of the fully executed Agreement is attached as Exhibit #1 to the Declaration of Kyle Nordrehaug
17 (“Decl. Nordrehaug”), served and filed herewith, and the form of the Agreement is based on the Los
18 Angeles Superior Court model form for class and PAGA settlements. A redline comparison between
19 the Agreement and the Court’s model form for a class and PAGA settlement is attached as Exhibit #2
20 to the Decl. Nordrehaug.

21 As consideration for this Settlement, the Gross Settlement Amount is Seven Million Dollars
22 (\$7,000,000) to be paid by Defendant, as set forth in the Agreement. The Gross Settlement Amount
23 will settle all issues pending in the Action between the Parties and will be made in full and final
24 settlement of the released claims. The Gross Settlement Amount includes all payments of Individual
25 Class Payments to the Participating Class Members, the Administration Expenses Payment to the
26 Administrator, the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment to
27 _____

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

1 Class Counsel, the Class Representative Service Payments to Plaintiffs, the FLSA Settlement Fund, and
2 the PAGA Penalties payment to the California Labor and Workforce Development Agency (the
3 “LWDA”) and the Aggrieved Employees. The Gross Settlement Amount does not include the
4 employer’s share of payroll taxes which will be separately paid by Defendant. The Settlement is all-in
5 with no reversion to Defendant and no need for Class Members to submit claim forms. Decl.
6 Nordrehaug at ¶3. The following is a table of the key financial terms of the Settlement and the proposed
7 deductions:

8 **\$7,000,000** (Gross Settlement Amount)

- 9 - \$30,000 (Plaintiffs’ proposed service awards - not to exceed \$10,000 each)
10 - \$50,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
11 - \$2,333,333.33 (Class Counsel Fees Payment - not to exceed one-third of settlement)
12 - \$500,000 (PAGA Penalties - 75% to LWDA / 25% to Aggrieved Employees)
13 - \$280,000 (Administration Expenses Payment - not to exceed amount)
14 - \$200,000 (FLSA Settlement Fund)

15 **\$3,606,666.67** (Net Settlement Amount)

16 Based upon 66,426 Class Members who collectively worked 2,748,435 Workweeks, the Gross
17 Settlement Amount provides a value of \$105 per Class Member and \$2.54 per Workweek and, after
18 deductions, the Net Settlement Amount provides an average recovery of \$54.29 per Class Member and
19 \$1.31 per Workweek. Decl. Nordrehaug at ¶6.

20 On August 12, 2024, the Parties participated in an all-day mediation session presided over by
21 David Rotman, Esq., a respected and experienced mediator of wage and hour class actions. Following
22 this mediation, the Parties reached an agreement to settle the Action. Decl. Nordrehaug at ¶5. The
23 Settlement is fair, reasonable and adequate, and should be preliminarily approved because there is a
24 substantial monetary payment, and there are substantial litigation and class-certification risks.
25 Therefore, Plaintiffs respectfully request that this Court grant preliminary approval of the Agreement
26 and enter the proposed order submitted herewith.

27 **II. DESCRIPTION OF THE SETTLEMENT**

28 The Gross Settlement Amount is Seven Million Dollars (\$7,000,000). (Agreement at ¶ 1.24.)
Under the Settlement, the Gross Settlement Amount consists of the following elements: (i) all
Individual Class Payments, Individual FLSA Payments, and Individual PAGA Payments; (ii) the
LWDA PAGA Payment; (iii) the Class Counsel Fees Payment and the Class Counsel Litigation

1 Expenses Payment; (iv) the Class Representative Service Payments; and (v) the Administration
2 Expenses Payment. (Agreement at ¶ 1.24.) The Gross Settlement Amount does not include
3 Defendant's share of payroll taxes. (Agreement at ¶ 3.1.) The Gross Settlement Amount shall be all-in
4 with no reversion to Defendant. (Agreement at ¶ 3.1.) Decl. Nordrehaug at ¶15.

5 Within twenty-five (25) days of the Effective Date, Defendant shall deposit the Gross Settlement
6 Amount with the Administrator. (Agreement at ¶ 4.2.) The distribution of Individual Class Payments
7 to Participating Class Members along with the other Court-approved distributions shall be made by the
8 Administrator within fourteen (14) days after Defendant fully funds the Gross Settlement Amount.
9 (Agreement at ¶ 4.3.) Decl. Nordrehaug at ¶16.

10 The amount remaining in the Gross Settlement Amount after the deduction of Court-approved
11 amounts for Individual FLSA Payments, Individual PAGA Payments, the LWDA PAGA Payment, the
12 Class Representative Service Payment, the Class Counsel Fees Payment, the Class Counsel Litigation
13 Expenses Payment, and the Administration Expenses Payment (the "Net Settlement Amount") shall be
14 allocated to Participating Class Members as their Individual Class Payments. (Agreement at ¶3.2.) The
15 Individual Class Payment for each Participating Class Member will be calculated by (i) the number of
16 the Participating Class Member's weeks worked in a nonexempt position in California for Defendant
17 during the Class Period, divided by (ii) the total weeks worked in a nonexempt position in California
18 for Defendant by all Participating Class Members during the Class Period. Determination of the number
19 of weeks that a Participating Class Member worked shall be based on Defendant's time records.
20 (Agreement at ¶ 3.2.4.) Workweeks will be calculated based on Defendant's records; however, Class
21 Members will have the right to challenge their number of Workweeks. Decl. Nordrehaug at ¶17.

22 Class Members may choose to opt-out of the Settlement by following the directions in the Class
23 Notice. (Agreement at ¶ 7.5, Ex. A.) All Class Members who do not "opt out" will be deemed
24 Participating Class Members and will be bound by the Settlement and will be entitled to receive an
25 Individual Class Payment. (Agreement at ¶ 7.5.3.) All Aggrieved Employees, including any who
26 submit an opt-out request, still will receive an Individual PAGA Payment and will release of the
27 Released PAGA Claims regardless of their request for exclusion. (Agreement at ¶¶ 5.4 and 7.5.4)
28 Finally, the Class Notice will advise the Class Members of their right to object to the Settlement and/or

1 dispute their Workweeks. (Agreement at ¶¶ 7.6 and 7.7, Ex. A.) Decl. Nordrehaug at ¶18.

2 A Participating Class Member must cash the check for his or her Individual Class Payment (and,
3 if applicable, Individual PAGA Payment and Individual FLSA Payment) within 180 days after it is
4 mailed. (Agreement at ¶ 4.3.1.) Any settlement checks not cashed within 180 days will be voided and
5 any funds represented by such checks sent to the California State Controller's Office, Unclaimed
6 Property Division, in the name of the Class Member, thereby leaving no "unpaid residue" subject to the
7 requirements of California Code of Civil Procedure Section 384, subd. (b). (Agreement at ¶ 4.3.3.)
8 Decl. Nordrehaug at ¶19.

9 Subject to Court approval, the Parties have agreed on ILYM Group to administer the settlement
10 in this action (the "Administrator"). (Agreement at ¶ 1.2.) The Administrator will be paid for
11 settlement administration in an amount not to exceed \$280,000. (Agreement at ¶ 3.2.3.) Decl.
12 Nordrehaug at ¶20. A Declaration from ILYM is submitted herewith. See Decl. Nordrehaug at ¶37.

13 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
14 to exceed one-third of the Gross Settlement Amount as the Class Counsel Fees Payment. (Agreement
15 at ¶ 3.2.2.) Class Counsel will also be allowed to apply for an award of Class Counsel Litigation
16 Expenses Payment in an amount not to exceed \$50,000. (Agreement at ¶ 3.2.2.) Subject to Court
17 approval, the Agreement provides for a payment of no more than \$10,000 each to the Plaintiffs as their
18 Class Representative Service Payments. (Agreement at ¶ 3.2.1.) Decl. Nordrehaug at ¶21.

19 Subject to Court approval, Five Hundred Thousand Dollars (\$500,000) will be paid from the
20 Gross Settlement Amount in settlement of Plaintiffs' claim for civil penalties under the California Labor
21 Code 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% (\$375,000) shall be allocated to the LWDA as its share of the civil penalties and 25%
24 (\$125,000) allocated to the Aggrieved Employees and distributed as Individual PAGA Payments based
25 on the number of their respective PAGA Pay Periods. (Agreement at ¶ 3.2.6.) 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 August 12, 2024 with David Rotman, 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. Plaintiffs 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. The release applicable to the Class is tethered to allegations
8 in the Action. (Agreement at ¶ 5.2.)

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

18 The Parties attended an arms-length mediation session with David Rotman, a respected and
19 experienced mediator of wage and hour class actions, to reach the Settlement. In preparation for the
20 mediation, Defendant provided Class Counsel with necessary information, including the Class payroll
21 and timekeeping data. Plaintiffs analyzed the data with the assistance of a damages expert, Berger
22 Consulting, and prepared and submitted a mediation brief and damage valuation to the Mediator.
23 Following the all-day mediation, the Parties agreed to the Settlement, which was memorialized in the
24 form of a Memorandum of Understanding. The final terms of the Settlement were negotiated and set
25 forth in the Agreement now presented for this Court's approval. Decl. Nordrehaug at ¶ 5. Importantly,
26 Plaintiffs and Class Counsel believe that this Settlement is fair, reasonable and adequate.

27 Class Counsel has conducted a thorough investigation into the facts of the class action. Over
28 the course of more than a year, Class Counsel diligently evaluated the Class Members' claims against

1 Defendant. Prior to the settlement negotiations, counsel for Defendant provided Class Counsel with
2 access to necessary documents and information for the Class. In addition, Class Counsel has previously
3 negotiated settlements with other employers in actions involving nearly identical issues and analogous
4 defenses. Based on the discovery obtained and their own independent investigation, evaluation and
5 experience, Class Counsel believes that the settlement with Defendant on the terms set forth in the
6 Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known
7 facts and circumstances, including the risk of significant delay, the risk that the claims would not be
8 allowed to proceed on a class basis, the defenses asserted by Defendant, and potential appellate issues.
9 Decl. Nordrehaug at ¶ 14.

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

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

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

24 The proposed Settlement has no "obvious deficiencies" and is well within the range of possible
25 approval. All Class Members will receive an opportunity to participate in the Settlement and receive
26 payment according to the same formula. (Agreement at ¶ 3.2,4.) Based upon 66,426 Class Members
27 who collectively worked 2,748,435 Workweeks, the Gross Settlement Amount provides a value of \$105
28 per Class Member and \$2.54 per Workweek and, after deductions, the Net Settlement Amount provides

1 an average recovery of \$54.29 per Class Member and \$1.31 per Workweek. Because of a prior class
2 settlement (*Halfhill v. Kaiser*, Alameda Superior Court Case No, RG21096610), this Settlement only
3 covers one year of liability and damages. Decl. Nordrehaug, ¶6.

4 The calculations to compensate for the amount due to the Class Members at the time the
5 Settlement was negotiated were calculated by Plaintiffs' expert, Berger Consulting, in advance of
6 mediation. Class Counsel analyzed the data for putative class members and determined the potential
7 maximum damages for the class claims. For the Class, the maximum value of the claim for unpaid
8 wages due to the alleged unpaid wages due to rounding was \$29,887,684, the maximum potential
9 damages for alleged meal period violations were estimated to be \$30,878,192 based upon a 51%
10 violation rate observed in the time records and after a reduction of 90% of the violations which were
11 subject to health care worker meal waivers, the maximum potential damages for alleged rest period
12 violations were estimated to be \$17,867,816 based upon an alleged 3% violation rate, and the maximum
13 potential damages for the alleged failure to reimburse business expenses were calculated to be \$389,597
14 based upon a 10% violation rate for when phones / ipads were not provided for work. In total, the
15 damages for the Class were calculated to have a maximum potential total value of \$79,023,289. In
16 addition, Plaintiffs calculated that the maximum value of the potential waiting time penalties were
17 between \$42,972,103 and \$61,883,906, depending on the predicate violation, and the maximum value
18 of the potential wage statement penalties were \$146,412,100.³ Defendant vigorously disputed
19 Plaintiffs' calculations and exposure theories. Decl. Nordrehaug, ¶6.

20 Consequently, the Gross Settlement Amount represents more than 8.8% of Plaintiffs' calculation
21 of the potential maximum damages at issue for the Class in this case, assuming these amounts could
22
23

24
25 ³ While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
26 226, at mediation Plaintiffs recognized that these claims were subject to additional, separate defenses
27 asserted by Defendant, including but not limited to, a good-faith dispute defense as to whether any
28 premium wages for meal or rest periods or other wages were owed given Defendant's position that
Plaintiffs and Class Members were properly compensated. *See Nordstrom Commission Cases*, 186 Cal.
App. 4th 576, 584 (2010) ("There is no willful failure to pay wages if the employer and employee have
a good faith dispute as to whether and when the wages were due.").

1 all be proven in full at trial.⁴ Importantly, the recent decision that good faith belief of compliance by
2 the employer in *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065 (2024), could completely
3 negate the claims for waiting time and wage statement penalties, even if wages were owed to the class.
4 The maximum calculations should then be realistically risk rated in consideration for both the risk of
5 class 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 the claims, the Settlement is most certainly fair and
7 reasonable.⁵ Clearly, the goal of this litigation has been met. Decl. Nordrehaug, ¶6.

8 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
9 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
10 Defendant present serious threats to the claims of the Plaintiffs and the other Class Members.
11 Defendant maintains that its practices complied with all applicable wage and hour laws. Defendant
12 maintains that all Class Members' work time was properly recorded and compensated and that there was
13 no miscalculation of the regular rate. Defendant contends that its meal and rest period policies and
14 practices provide Class Members with meal and rest periods and that the payment of significant meal
15 premiums is evidence of Defendant's legal compliant practices. As to expense reimbursement,
16 Defendant maintains that it did not fail to provide reimbursement for necessary business expenses
17 because, among other things, employees are not required to use their personal cell phones to perform
18 their work. Defendant could argue that the decisions in *Brinker v. Superior Court*, 53 Cal. 4th 1004
19 (2012), *Lockheed Martin Corp. v. Superior Ct.*, 29 Cal. 4th 1096, 1108 (2003), and *Salazar v. See's*
20 *Candy Shops Inc.*, 64 Cal.App.5th 85 (2021), weakened Plaintiffs' claims in terms of liability and value,

21
22 ⁴ Because the PAGA claim does not provide a recovery to the Class, Plaintiffs did not include the
23 PAGA claim in this discussion of the class claim valuation. The PAGA claim is addressed in the Decl.
Nordrehaug at ¶ 33.

24 ⁵ See *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)
25 approving settlement which represented "roughly one-sixth of the potential recovery"); *Stovall-Gusman*
26 *v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval
27 where "the proposed Total Settlement Amount represents approximately 10% of what class might have
28 been awarded had they succeeded at trial."); *Viceral v. Mistras Grp., Inc.*, 2016 WL 5907869 (N.D. Cal.
2016) (approving wage and hour class action settlement amounting to 8.1% of full verdict value); *Ma*
v. Covidien Holding, Inc., 2014 WL 2472316, (C.D. Cal. 2014) (approving wage and hour class action
settlement worth "somewhere between 9% and 18%" of full verdict value).

1 and preclude claims from proceeding on a class or representative basis. Defendant also maintains that
2 a good faith dispute and absence of willfulness would negate the claims for waiting time penalties and
3 failure to provide accurate itemized wage statements. See e.g. *Naranjo v. Spectrum Sec. Servs.*, 15 Cal.
4 5th 1056, 1065 (May 6, 2024) (“if an employer reasonably and in good faith believed it was providing
5 a complete and accurate wage statement in compliance with the requirements of section 226, then it has
6 not knowingly and intentionally failed to comply with the wage statement law.”) If successful,
7 Defendant’s defenses could eliminate or substantially reduce any recovery to the Class. While Plaintiffs
8 believe that these defenses could be overcome, Defendant maintains these defenses have merit and
9 therefore present a serious risk to recovery by the Class. Decl. Nordrehaug, ¶ 24.

10 There was also a significant risk that, if the Action was not settled, Plaintiffs would be unable
11 to obtain class certification and thereby not recover on behalf of any employees other than themselves.
12 Defendant argued that the individual experience of each putative class member varied with respect to
13 the claims, which would preclude the claims from proceeding on a class basis. For instance, Plaintiffs’
14 meal and rest period claims would require individualized inquiries into whether each employee took
15 a compliant meal or rest period on a given shift and, if not, why. Plaintiffs are aware of other cases
16 where class certification of similar claims was denied. See e.g. *Cacho v. Eurostar, Inc.*, 43 Cal. App.
17 5th 885 (2019) (denying certification of rest break claims). Finally, even if class certification was
18 successful, as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National*
19 *Association*, 59 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class-wide recovery
20 even where a class has been certified. While other cases have approved class certification of wage and
21 hour claims, class certification in this Action would have been hotly disputed and was by no means a
22 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 \$7,000,000.00. 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 how
28 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 Plaintiffs 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 Workweeks worked by that individual. Decl. Nordrehaug, ¶4.

11 Plaintiffs will apply to the Court for Class Representative Service Payments in consideration
12 for their service and for the risks undertaken on behalf of the Class. (Agreement at ¶ 3.2.1.) Plaintiffs
13 performed their duties admirably by working with Class Counsel. Decl. Nordrehaug at ¶27. The
14 concurrently filed declarations of the Plaintiffs are presented herewith in support of the request. For
15 purposes of this preliminary approval stage, the requested service award of is well within the accepted
16 range of awards for purposes of preliminary approval. *See, e.g., Andrews v. Plains All Am. Pipeline*
17 *L.P.*, 2022 U.S. Dist. LEXIS 172183, at *11 (C.D. Cal. 2022) (finding that the requested service awards
18 of \$15,000 each are appropriate); *Reynolds v. Direct Flow Med., Inc.*, 2019 U.S. Dist. LEXIS 149865,
19 at *19 (N.D. Cal. 2019) (granting request for \$12,500 service award); *Mathein v. Pier 1 Imps. (U.S.)*,
20 *Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500 where average class member
21 payment was \$351); *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D. Cal.
22 Oct. 06, 2008) (awarding \$25,000 service award to each of six plaintiffs in overtime class action); *Glass*
23 *v. UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D. Cal. 2007) (awarding \$25,000 service award in
24 overtime class action and a pool of \$100,000 in enhancements). As explained in *Glass*, service awards
25 are routinely awarded to class representatives to compensate them for the time and effort expended on
26 the case, for the risk of litigation, for the fear of suing an employer and retaliation therefrom, and to
27 serve as an incentive to vindicate the statutory rights of all employees. 2007 WL 221862 at *16-17.

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

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

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

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

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

28 Plaintiffs contend that the Settlement meets all of the requirements for certification of a

1 settlement class under California Code of Civil Procedure § 382 as demonstrated below, and therefore,
2 the Court may appropriately approve the Class as defined in the Agreement. This Court should
3 conditionally certify the Class, for settlement purposes only, defined as follows:

4 All non-exempt persons who were employed by Defendant in the State of California at
5 any time during the Class Period.

6 (Agreement at ¶ 1.5.)

7 The “Class Period” is from January 1, 2024 through December 31, 2024. (Agreement at ¶ 1.6)

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

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

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

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

16 Plaintiffs contend that the proposed Class satisfies the criteria for certification under Code of
17 Civil Procedure section 382. Defendant disputes that Plaintiffs can satisfy any of these requirements
18 for class certification in the litigation context, but does not oppose certification for purposes of the
19 Settlement. Accordingly, the proposed Class should be certified for purposes of the Settlement only.
20 (Agreement at ¶ 12.1.)

21 **1. Ascertainability And Numerosity.**

22 Plaintiffs bring this Action on behalf of a Class of non-exempt employees who worked for
23 Defendant during the applicable Class Period. Plaintiffs assert that all of these individuals are
24 ascertainable because the class members can readily be determined through examination of Defendant’s
25 files. Given that the Class consists of approximately 66,426 members, Plaintiffs maintain that
26 numerosity is clearly satisfied. *See Bowles v. Superior Court*, 44 Cal.2d 574 (1955) (class with 10
27 members sufficiently numerous); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of
28 48 members satisfies numerosity requirement.) Here, Plaintiffs assert that the 66,426 individuals who

1 comprise the Class can be identified based on Defendant's records and are sufficiently numerous for
2 class certification. Decl. Nordrehaug at ¶30.

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

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

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

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

21 **3. Typicality.**

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

28 In the Action, Plaintiffs contend that there can be little doubt that the typicality requirement is

1 satisfied. Plaintiffs worked for Defendant as non-exempt employees during the Class Period. Plaintiffs
2 contend that, like every other member of the Class, they were subjected to the same practices and
3 policies of Defendant and are subject to the same defenses. Thus, Plaintiffs assert that the claims of
4 Plaintiffs and the Class Members arise from the same course of conduct by the Defendant, involve the
5 same employment policies and practices of Defendant, and are based on the same legal theories. Decl.
6 Nordrehaug at ¶30. For purposes of settlement, Plaintiffs maintain that the typicality requirement is met
7 as to the common issues presented in this case.

8 **4. Adequacy.**

9 Plaintiffs contend that the Class Members are adequately represented here because Plaintiffs and
10 Class Counsel (a) do not have any conflicts of interest with other Class members, and (b) will prosecute
11 the case vigorously on behalf of the Class. *Hanlon*, 150 F.3d at 1020. First, Plaintiffs are well aware
12 of their duties as the representatives of the Class and have actively participated in the prosecution of this
13 case to date. Plaintiffs effectively communicated with counsel, provided documents to counsel, and
14 participated in the investigation and negotiations in the Action. Second, Plaintiffs retained competent
15 counsel who are experienced in employment class actions and who have no conflicts. Decl. Nordrehaug
16 at ¶ 31; Declaration of Haig Kazandjian at ¶¶ 2-4. Third, there is no antagonism between the interests
17 of the Plaintiffs and those of the Class. Both Plaintiffs and the Class Members seek monetary relief
18 under the same set of facts and legal theories.

19 **5. Superiority.**

20 To certify a class, a court also must 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, Plaintiffs contend that a class action is the superior mechanism for resolution of the claims
3 as pled by the Plaintiffs.

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

5 The Court has broad discretion in approving a practical notice program. *7- Eleven Owners for*
6 *Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1164 (2000). The Parties have agreed
7 upon procedures by which the Class Members will be provided with written notice of the Settlement
8 similar to those approved and utilized in hundreds of class action settlements. In accordance with the
9 Agreement, Defendant will provide to the Administrator a confidential electronic spreadsheet
10 containing the Class Data. (Agreement at ¶ 4.1.) Within 25 business days after preliminary approval,
11 the Administrator will mail the Class Notice to all Class Members via first-class U.S. Mail using the
12 most current mailing address information available. (Agreement at ¶ 7.4.2.)

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

22 The Class Notice will state that the Class Members shall have sixty (60) days from the date that
23 the Class Notice is mailed to them (the "Response Deadline") to request exclusion (opt-out), and that
24 the Response Deadline shall be extended 14 days in the event of a re-mailing. (Agreement at ¶¶ 1.47,
25 7.5.) Class Members shall be given the opportunity to object to the Settlement and/or requests for
26 attorneys' fees and expenses and to appear at the Final Approval Hearing. (Agreement at ¶ 7.7.) Class
27 Members who do not submit a timely and proper request to opt out will automatically receive a payment
28 of their Individual Class Payment (and, if applicable, their Individual PAGA Payment). This notice

1 program was designed to meaningfully reach the Class Members and it advises them of all pertinent
2 information concerning the Settlement. Decl. Nordrehaug at ¶32. The mailing and distribution of the
3 Class Notice satisfies the requirements of due process, is the best notice practicable under the
4 circumstances, and complies with Rules of Court 3.766 and 3.769(f).

5 **VII. CONCLUSION**

6 Based on the foregoing, Plaintiffs respectfully request that the Court preliminarily approve the
7 proposed settlement and sign the proposed Preliminary Approval Order, which is submitted herewith,
8 and schedule the final approval hearing for a date in approximately five months.

9 Dated: January 31, 2025

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Kyle Nordrehaug

Kyle R. Nordrehaug, Esq.

Attorney for Plaintiffs