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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

PAUL WILLIAMS, an individual, on behalf
of himself and on behalf of all persons
similarly situated,

Plaintiff,

vs.

ZOOLOGICAL SOCIETY OF SAN DIEGO,
a Corporation; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO.: **37-2023-00043072-CU-OE-CTL**

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

Hearing Date: March 28, 2025

Hearing Time: 10:30 a.m.

Judge: Hon. Richard S. Whitney
Dept.: 68

Date Action Filed: October 4, 2023

Trial Date: Not set

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1 **I. INTRODUCTION**

2 Plaintiff Paul Williams (“Plaintiff”) respectfully submits this memorandum in support of the
3 unopposed motion for preliminary approval of the proposed class action settlement with Defendant
4 Zoological Society of San Diego (“Defendant”), and seek entry of an order: (1) preliminarily approving
5 the proposed settlement of this class action with Defendant; (2) for settlement purposes only,
6 conditionally certifying the Class, which is comprised of “all individuals who were employed by
7 Defendant in California and classified and worked as a non-exempt employee at any time during the
8 Class Period”, which is October 4, 2019 to October 29, 2024; (3) provisionally appointing Plaintiff as
9 the representative of the Class; (4) provisionally appointing Norman B. Blumenthal, Kyle R.
10 Nordrehaug, Aparajit Bhowmik, Nicholas J. De Blouw, Jeffrey S. Herman, Sergio J. Puche, and Trevor
11 G. Moran of Blumenthal Nordrehaug Bhowmik De Blouw LLP and Emilia Arutunian of The Gomez
12 Trial Attorneys as Class Counsel; (5) approving the form and method for providing class-wide notice;
13 (6) directing that notice of the proposed settlement be given to the Class; (7) appointing Apex Class
14 Action as Administrator, and (8) scheduling a final approval hearing date, proposed for August 22,
15 2025, to consider Plaintiff’s motion for final approval of the settlement and for approval of attorneys’
16 fees, expenses and the service award. Plaintiff and Defendant (collectively the “Parties”) have reached
17 a full and final settlement of the above-captioned action, which is set forth in the Class Action and
18 PAGA Settlement Agreement (“Agreement”) filed concurrently with the Court.¹ A copy of the fully
19 executed Agreement is attached as Exhibit #1 to the Declaration of Kyle Nordrehaug (“Decl.
20 Nordrehaug”), served and filed herewith. The form of the Agreement is based upon the Los Angeles
21 County Superior Court model form for a class and PAGA settlement.

22 As consideration for this Settlement, the non-reversionary Gross Settlement Amount of Five
23 Million Two Hundred Thousand Dollars (\$5,200,000) (the “Gross Settlement Amount”) is to be paid
24 by Defendant, as set forth in the Agreement. The Gross Settlement Amount will settle all issues
25 pending in the Action between the Parties and will be made in full and final settlement of the Released
26 Class Claims in exchange for the payments to Participating Class Members from the Net Settlement

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

Amount, and includes (a) the costs of administration of the settlement, (b) all attorneys' fees and costs, (c) Class Representative Service Payment, and (d) the PAGA Penalties payment allocated 75% to 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:

\$5,200,000	(Gross Settlement Amount)
- \$10,000	(Plaintiff's proposed service award not to exceed amount)
- \$30,000	(Class Counsel Litigation Expenses Payment - not to exceed amount)
- \$1,733,333	(Class Counsel Fees Payment - not to exceed 1/3 of settlement)
- \$104,000	(PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
- \$40,000	(Administration Expenses Payment - not to exceed amount)
\$3,282,667	(Net Settlement Amount)

Based upon 7,414 Class Members who worked an estimated 571,520 work weeks (Agreement at ¶ 4.1), the Gross Settlement Amount provides an average value of \$701 per Class Member and \$9 per workweek and after deductions the Net Settlement Amount provides an average recovery of \$442.76 per Class Member and a recovery of \$5.74 per workweek. Decl. Nordrehaug at ¶6.

On July 29, 2024, the Parties participated in an all-day mediation with Tripper Ortman, a respected and experienced mediator of wage and hour class actions. Following the mediation, the Parties agreed on the basic terms of a settlement pursuant to a mediator's proposal, memorialized in the form of a Memorandum of Understanding. Decl. Nordrehaug at ¶5. 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. 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 Five Million Two Hundred Thousand Dollars (\$5,200,000). (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.

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

7 **III. CASE BACKGROUND**

8 The description of the case and claims, along with the procedural history is set forth in the
9 Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and the
10 exchange of documents and information in connection with the Action for more than one year which
11 permitted Class Counsel to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10, 14.
12 The Parties participated in a mediation on July 29, 2024 with Tripper Ortman, which after arms' length
13 negotiations during and after the mediation, resulted in this Settlement. Decl. Nordrehaug, ¶12.

14 **IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO 15 GRANT PRELIMINARY APPROVAL**

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

22 Preliminary approval is the first of three steps that comprise the approval procedure for
23 settlements of class actions. The second step is the dissemination of notice of the settlement to all class
24 members. The third step is a final settlement approval hearing, at which evidence and argument
25 concerning the fairness, adequacy, and reasonableness of the settlement may be presented, and class
26 members may be heard regarding the settlement. *See Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
27 1801 (1996); *Manual for Complex Litigation, Second* §30.44 (1993); Cal. Rules of Court, rule 3.769.

28 The primary question presented on an application for preliminary approval of a proposed class

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

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

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

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 With regard to class action settlements, the opinions of counsel should be given considerable
2 weight both because of counsel's familiarity with this litigation and previous experience with cases such
3 as these. *Officers for Justice*, 688 F.2d at 625. As a result, courts hold that the recommendation of
4 counsel is entitled to significant weight. *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D.
5 523, 528 (C.D. Cal. 2004).

6 **B. Factors To Be Considered In Granting Preliminarily Approval**

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

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

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

26 Class Counsel are experienced and qualified to evaluate the class claims, the defenses asserted,
27 and the risks and benefits of trial and settlement, and Class Counsel are particularly experienced in
28 wage and hour employment class actions, as Class Counsel has previously litigated and certified similar

1 claims against other employers. Decl. Nordrehaug at ¶31. The view of qualified and well-informed
2 counsel that a class action settlement is fair, adequate, and reasonable is entitled to significant weight.
3 *See Kullar v. Foot Locker*, 168 Cal. App. 4th 116, 133 (2008) (the trial court "undoubtedly should
4 continue to place reliance on the competence and integrity of counsel, the involvement of a qualified
5 mediator, and the paucity of objectors to the settlement."); *Dunk*, 48 Cal. App. 4th at 1802.

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

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

25 Here, there can be no dispute that the litigation has been hard-fought with aggressive and
26 capable advocacy on both sides. The Parties were represented by experienced and capable counsel who
27 zealously advocated their positions. Accordingly, "[t]here is likewise every reason to conclude that
28 settlement negotiations were vigorously conducted at arms' length and without any suggestion of undue

influence.” *In re Wash. Public Power Supply Sec. Litig.*, 720 F. Supp. 1379, 1392 (D. Ariz 1989).

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

The proposed Settlement herein has no “obvious deficiencies” and is well within the range of possible approval. All Class Members will receive an opportunity to participate in the Settlement and receive payment according to the same formula. (Agreement at ¶ 3.2(e).) Based upon 7,414 Class Members who worked an estimated 571,520 work weeks (Agreement at ¶ 4.1), the Gross Settlement Amount provides an average value of \$701 per Class Member and \$9 per workweek and after deductions the Net Settlement Amount provides an average recovery of \$442.76 per Class Member and a recovery of \$5.74 per workweek. Decl. Nordrehaug, ¶6.

The calculations to compensate for the amount due for the Class at the time of the mediation were calculated by Berger Consulting, Plaintiff’s damage expert. As to the Class whose claims are at issue in this Action, Plaintiff used the expert to analyze the data and determine the potential unpaid wages for the employees. The maximum potential damages were calculated to be \$530,085 for alleged unpaid wages due to rounding, \$17,264,624 for the alleged unpaid wages for off-the-clock work at one hour per week, \$9,329 for alleged unpaid overtime due to the miscalculation of the regular rate, \$360,843 for the alleged unpaid meal premiums and sick pay due to the alleged miscalculation of the result rate, \$5,212,757 for alleged meal period damages based upon a 12.3% potential violation rate for all shifts worked observed in the time records and after deduction for meal premiums paid by Defendant, \$6,070,686 for alleged rest period damages based upon the same 12.3% potential violation rate for shifts worked and after deduction for rest premiums paid by Defendant, \$753,280 for alleged unreimbursed cell-phone expenses at \$5 per month. Decl. Nordrehaug, ¶6. As a result, the total damage valuation was calculated that Defendant were subject to a maximum damage claim in the amount of \$30,201,604. As to potential penalties, Plaintiff calculated that potential waiting time penalties were a maximum of between \$11,153,856 and \$20,910,426, and potential maximum wage statement penalties were between \$1,793,800 and \$15,340,800, depending on the predicate violation.³

³ While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and 226, at mediation Plaintiff recognized that these claims were subject to additional, separate defenses asserted

1 Defendant vigorously disputed Plaintiff's calculations and exposure theories. Decl. Nordrehaug, ¶6.

2 Consequently, the Gross Settlement Amount of \$5,200,000 represents more than 17% of the
3 maximum value of the alleged damages at issue in this case at the time this Settlement was negotiated.⁴
4 Importantly, the recent decision that good faith belief of compliance by the employer in *Naranjo v.*
5 *Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065 (2024), could completely negate the claims for
6 waiting time and wage statement penalties, even if wages were owed to the Class. The above maximum
7 calculations should then be realistically risk adjusted in consideration for both the risk of class
8 certification and the risk of establishing class-wide liability on all claims. Given the amount of the
9 settlement as compared to the potential value of claims in this case and the defenses asserted by
10 Defendant, this settlement is fair and reasonable.⁵ Clearly, the goal of this litigation has been met.
11 Decl. Nordrehaug, ¶6.

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

17
18 by Defendant, including, a good faith dispute defense as to whether any premium wages for meal or rest
19 periods or other wages were owed given Defendant's position that Plaintiff and Class Members were
20 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.").

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

23 ⁵ See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a
24 settlement where the settlement amount constituted approximately 25% of the estimated overtime
25 damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12
26 (N.D. Cal. 2015) (granting final approval where "the proposed Total Settlement Amount represents
approximately 10% of what class might have been awarded had they succeeded at trial."); *Viceral v.*
27 *Mistras Grp., Inc.*, 2016 WL 5907869 (N.D. Cal. 2016) (approving wage and hour class action
28 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 maintained there was no miscalculation of the regular rate when paying wages to the Plaintiff and the
2 Class. Defendant contend that their meal and rest period policies fully complied with California law
3 and that Defendant did not fail to provide the opportunity for legally required meal and rest breaks.
4 Defendant could argue that its payment of significant meal period premiums is further evidence of their
5 lawful practices. Defendant contends that there was no failure to pay for business expenses and any
6 cell phone usage was merely convenient and voluntary such that reimbursement was not legally
7 required. Finally, Defendant could argue that the Supreme Court decision in *Brinker v. Superior Court*,
8 53 Cal. 4th 1004 (2012), weakened Plaintiff's claims, on liability, value, and class certifiability as to
9 the meal and rest period claims. Defendant also argues that based on its facially lawful practices,
10 Defendant acted in good faith and without willfulness, which if accepted would negate the claims for
11 waiting time penalties and/or inaccurate wage statements. See e.g. *Naranjo v. Spectrum Sec. Servs.,*
12 *Inc.*, 15 Cal. 5th 1056, 1065 (2024) ("if an employer reasonably and in good faith believed it was
13 providing a complete and accurate wage statement in compliance with the requirements of section 226,
14 then it has not knowingly and intentionally failed to comply with the wage statement law.") If
15 successful, Defendant's defenses could eliminate or substantially reduce any recovery to the Class.
16 While Plaintiff believes that these defenses could be overcome, Defendant maintains these defenses
17 have merit and therefore present a serious risk to recovery by the Class. Decl. Nordrehaug, ¶ 24.

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

27 After arm's length negotiations between experienced and informed counsel, the Parties
28 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of

1 \$5,200,000. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

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

8 2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
9 (9th Cir. 2000)).

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

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

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

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

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

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

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

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

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

26 All individuals who were employed by Defendant in California and classified and
27 worked as a non-exempt employee at any time during the Class Period.

28 (Agreement at ¶ 1.5.)

The Class Period is from October 4, 2019 to October 29, 2024. (Agreement at ¶ 1.12).

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

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

5 Code of Civil Procedure Section 382 authorizes class actions “when the question is one
6 of a common or general interest, of many persons, or when the parties are numerous,
7 and it is impracticable to bring them all before the court....” The party seeking
8 certification has the burden to establish the existence of both an ascertainable class and
9 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.

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

11 While Defendant reserves all rights to dispute that the Plaintiff can satisfy these requirements,
12 the Parties agree that Defendant will not dispute that these requirements may be satisfied in this case
13 for purposes of settlement only and therefore, the proposed Class should be certified for purposes of
14 settlement only. (Agreement at ¶ 2.9.)

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

16 Plaintiff brings this action on behalf of a Class of non-exempt employees of Defendant during
17 the Class Period. Plaintiff asserts that all of these individuals are ascertainable because the class
18 members can readily be determined through examination of Defendant’s files. Given that the Class
19 consists of approximately 7,414 individuals, Plaintiff maintains that numerosity is clearly satisfied. *See*
20 *Bowles v. Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members); *Rose v. City of Hayward*, 126
21 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.) Here, Plaintiff
22 asserts that the 7,414 current and former employees that comprise the Class can be identified based on
23 Defendant’s records and are sufficiently numerous for class 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

1 fact questions predominate.” *Sav-On*, 34 Cal. 4th at 334.

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

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

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

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

25 In this Action, Plaintiff contends that the typicality requirement is fully satisfied. Plaintiff, like
26 every other member of the Class, was employed by Defendant as a non-exempt employee, and, like
27 every other member of the Class, was subject to the same employment practices. Plaintiff, like every
28 other member of the Class, also claims owed compensation as a result of the Defendant’s uniform

1 company policies and practices. Thus, the claims of Plaintiff and the members of the Class arise from
2 the same course of conduct by Defendant, involve the same issues, and are based on the same legal
3 theories. Decl. Nordrehaug at ¶30. Plaintiff asserts that the typicality requirement is met as to the
4 common issues presented in this case. Defendant disputes that the typicality requirement is satisfied
5 but do not oppose a finding of typicality for purposes of this Settlement only.

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

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

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

21 To certify a class, the Court must also determine that a class action is superior to other available
22 methods for the fair and efficient adjudication of the controversy. “Where classwide litigation of
23 common issues will reduce litigation costs and promote greater efficiency, a class action may be
24 superior to other methods of litigation.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir.
25 1996). As the Supreme Court has previously explained:

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

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

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 the superiority requirement is satisfied but,
4 Defendant does not dispute a finding of superiority 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. (*See Exhibit "A"* to the Agreement.) The Class Notice will include
11 a Spanish translation. (Agreement at ¶ 1.11.) Decl. Nordrehaug at ¶32. The Class Notice will explain
12 that the Class Members shall have sixty (60) days from the date that the Class Notice is mailed to them
13 (the "Response Deadline") to request exclusion (opt-out) or to submit a written objection. (Agreement
14 at ¶¶ 1.42, 8.5, 8.7.) Class Members shall be given the opportunity to object to the Settlement and/or
15 the attorneys' fees and expenses, and to appear at the Final Approval Hearing. (Agreement at ¶ 8.7.)
16 This notice program was designed to meaningfully reach the Class Members and it advises them of all
17 pertinent information concerning the Settlement. Decl. Nordrehaug at ¶32. The distribution of the
18 Class Notice satisfies the requirements of due process, is the best notice practicable under the
19 circumstances, and complies with Rules of Court 3.766 and 3.769(f).

20 **VII. CONCLUSION**

21 Plaintiff respectfully requests 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 August 22, 2025.

24 Dated: February 20, 2025

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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