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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **IN AND FOR THE COUNTY OF SAN MATEO**

15 CELESTE JACOBS, DAVID HALEY, and
16 GABRIEL A. REYES, individuals, on behalf
17 of themselves and on behalf of all persons
18 similarly situated,

19 Plaintiff,

20 vs.

21 DPR CONSTRUCTION, INC., a
22 Corporation; and DOES 1 through 50,
23 inclusive,

24 Defendants.

CASE NO.: **23-CIV-05852**

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

Hearing Date: February 25, 2026

Hearing Time: 2:00 p.m.

Judge: Hon. Nicole S. Healy

Dept: 28

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Trial Date: Not set

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1 **I. INTRODUCTION**

2 Plaintiffs Celeste Jacobs, David Haley, and Gabriel A. Reyes (“Plaintiffs”) respectfully submit
3 this memorandum in support of the unopposed motion for preliminary approval of the proposed class
4 action and PAGA settlement with Defendant DPR Construction, Inc. (“Defendant”), and seek entry of
5 an order: (1) preliminarily approving the proposed settlement of this class action with Defendant; (2)
6 for settlement purposes only, conditionally certifying the Class, which is comprised of “all individuals
7 who are or previously were employed by Defendant who were classified as non-exempt in the State
8 of California at any time during the Class Period”, which is December 11, 2019 through May 27, 2025;
9 (3) provisionally appointing Plaintiffs as the representatives of the Class; (4) provisionally appointing
10 Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel; (5) approving the form and
11 method for providing class-wide notice; (6) directing that notice of the proposed settlement be given
12 to the Class; (7) appointing Apex Class Action as the Administrator, and (8) scheduling a final approval
13 hearing date, proposed for July 23, 2026, to consider Plaintiffs’ motion for final approval of the
14 settlement and for approval of attorneys’ fees, expenses and the service awards. Plaintiffs and
15 Defendant (collectively the “Parties”) have reached a full and final settlement of the above-captioned
16 action (the “Settlement”), which is set forth in the Class Action and PAGA Settlement Agreement and
17 Release (“Agreement”) filed concurrently with the Court.¹ A copy of the fully executed Agreement
18 is attached as Exhibit #1 to the Declaration of Kyle Nordrehaug (“Decl. Nordrehaug”), served and filed
19 herewith.

20 On February 12, 2025, the Parties participated in an all-day mediation with Hon. Brian C.
21 Walsh (ret.), a respected and experienced mediator of wage and hour class actions. Following the
22 mediation, the Parties agreed on the basic terms of a settlement pursuant to a mediator's proposal,
23 memorialized in the form of a Memorandum of Understanding. Decl. Nordrehaug at ¶5. The
24 Settlement is fair, reasonable and adequate, and should be preliminarily approved, because there is a
25 substantial monetary payment, and there are significant litigation risks.

26 As consideration for this Settlement, the non-reversionary Gross Settlement Amount of Four
27

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

1 Million Five Hundred Thousand Dollars (\$4,500,000) (the “Gross Settlement Amount”) is to be paid
2 by Defendant, as set forth in the Agreement. The Gross Settlement Amount will settle all issues
3 pending in the Action between the Parties (Plaintiffs, Participating Class Members, and the Aggrieved
4 Employees) and will be made in full and final settlement of the Released Class Claims and Released
5 PAGA Claims in exchange for the payments to Participating Class Members and Aggrieved
6 Employees, and includes (a) the costs of administration of the settlement, (b) all attorneys' fees and
7 costs, (c) Class Representative Service Payments, and (d) the PAGA Penalties payment allocated 75%
8 to the LWDA and 25% to the Aggrieved Employees. (Agreement at ¶ 2.22.) Decl. Nordrehaug at ¶3.
9 The following is a table of the key Settlement terms and the proposed deductions:

10	\$4,500,000 (Gross Settlement Amount)
11	- \$37,500 (Plaintiffs' proposed service awards - not to exceed amount)
12	- \$16,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
13	- \$1,500,000 (Class Counsel Fees Payment - not to exceed 1/3 of settlement)
	- \$100,000 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
	- \$28,000 (Administration Expenses Payment - not to exceed amount)
13	\$2,818,500 (Net Settlement Amount)

14 Based upon 4,096 Class Members who worked an estimated 343,202 Workweeks (Agreement at ¶7.1),
15 the Gross Settlement Amount provides an estimated average value of \$1,098 per Class Member and
16 \$13 per workweek and after deductions the Net Settlement Amount provides an estimated average
17 recovery of \$688.11 per Class Member and a recovery of \$8.21 per workweek, assuming 100%
18 participation in the Settlement. Decl. Nordrehaug at ¶6.

19 Plaintiffs respectfully request that this Court grant preliminary approval of the Agreement and
20 enter the proposed order submitted herewith.

21 **II. DESCRIPTION OF THE SETTLEMENT**

22 The Gross Settlement Amount is Four Million Five Hundred Thousand Dollars (\$4,500,000).
23 (Agreement at ¶ 6.1.) Under the Settlement, the Gross Settlement Amount consists of the following
24 elements: (1) payment of the Individual Class Payments to the Participating Class Members; (2) Class
25 Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (3) Administration Expenses
26 Payment; (4) the Class Representative Service Payments to the Plaintiffs; and (5) the PAGA Penalties
27 payment. (Agreement at ¶ 6.2.) The Gross Settlement Amount does not include Defendant's share of
28 payroll taxes. (Agreement at ¶ 2.22, 7.4.) The Gross Settlement Amount shall be all-in with no

1 reversion to Defendant. (Id.) Decl. Nordrehaug at ¶15.

2 The Agreement contains appropriate terms which have been previously approved by Courts
3 throughout California. (See Agreement at ¶¶ 2.28, 6.2, 7.3, 8.1.) The proposed Class Notice also
4 provides the required protections for the Class to opt out, object to the Settlement or dispute their weeks
5 worked. (See Agreement at ¶¶ 11.4, 11.5, 11.6, 11.7, and Exhibit A.) The additional details of the
6 Settlement are addressed in the Decl. Nordrehaug at ¶¶ 16-22. As set forth in the accompanying proof
7 of service, the LWDA has been served with this motion and the Agreement.

8 **III. CASE BACKGROUND**

9 The description of the case and claims, along with the procedural history is set forth in the
10 Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and the
11 exchange of documents and information in connection with the Action for more than one year which
12 permitted Class Counsel to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10, 14.
13 The Parties participated in a mediation on February 12, 2025 with Hon. Brian C. Walsh (ret.), which
14 after arms' length negotiations during and after the mediation, resulted in this Settlement. Decl.
15 Nordrehaug, ¶12.

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

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

23 Preliminary approval is the first of three steps that comprise the approval procedure for
24 settlements of class actions. The second step is the dissemination of notice of the settlement to all class
25 members. The third step is a final settlement approval hearing, at which evidence and argument
26 concerning the fairness, adequacy, and reasonableness of the settlement may be presented, and class
27 members may be heard regarding the settlement. See *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
28

1801 (1996); *Manual for Complex Litigation, Second* §30.44 (1993); Cal. Rules of Court, rule 3.769.

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

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

The approval of a proposed settlement of a class action suit is a matter within the broad discretion of the trial court. *Wershba, supra*, 91 Cal.App.4th at 234-235; *Dunk*, 48 Cal.App.4th 1794. In considering a potential settlement for preliminary approval purposes, the trial court does not have to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute, and need not engage in a trial on the merits. *Wershba, supra*, 91 Cal.App.4th at 239-40; *Dunk, supra*, 48 Cal.App. 4th at 1807. The Ninth Circuit explained that, “the very essence of a settlement is compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” *Officers for Justice*, 688

² California courts look to federal authority on class actions. *Vasquez v. Superior Court*, 4 Cal.3d 800, 821 (1971). “It is well established that in the absence of relevant state precedents trial courts are 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 F.2d at 624. Thus, when analyzing the settlement, the amount is “not to be judged against a
2 hypothetical or speculative measure of what might have been achieved by the negotiators.” *Officers*
3 *for Justice*, 688 F.2d at 625, 628.

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

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

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

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

23 This settlement is the result of extensive and hard-fought litigation as well as negotiations
24 before an experienced and well-respected mediator, Hon. Brian C. Walsh (ret.). Defendant has
25 expressly denied and continues to deny any wrongdoing or legal liability arising out of the conduct
26 alleged in the Action. Defendant also asserts that this case should not proceed as a class action.
27 Plaintiffs and Class Counsel have determined that it is desirable and beneficial to the Class to resolve
28 the Released Class Claims of the Class in accordance with this Settlement. The release applicable to

1 the Class is appropriately tethered to factual allegations in the Operative Complaint. (Agreement at ¶
2 9.1.)

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

11 The Parties attended an arms-length mediation session with Hon. Brian C. Walsh (ret.), a
12 respected and experienced mediator of wage and hour class actions, in order to reach this Settlement.
13 In preparation for the mediation, Defendant provided Class Counsel with payroll and employment data,
14 along with other information regarding the Class Members, various internal documents and policies,
15 and other compensation and employment-related materials. Class Counsel analyzed the data with the
16 assistance of damages expert Berger Consulting and prepared and submitted a mediation brief to the
17 mediator. The final settlement terms were negotiated and set forth in the Agreement now presented for
18 this Court's approval. Decl. Nordrehaug at ¶ 5. Importantly, Plaintiffs and Class Counsel believe that
19 this Settlement is fair, reasonable and adequate.

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

1 Class Members. Decl. Nordrehaug, ¶ 23.

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

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

9 The proposed Settlement herein has no “obvious deficiencies” and is well within the range of
10 possible approval. All Class Members will receive an opportunity to participate in the Settlement and
11 receive payment according to the same formula. (Agreement at ¶ 6.2(e).) Based upon 4,096 Class
12 Members who worked an estimated 343,202 work weeks (Agreement at ¶ 7.1), the Gross Settlement
13 Amount provides an estimated average value of \$1,098 per Class Member and \$13 per workweek and
14 after deductions the Net Settlement Amount provides an estimated average recovery of \$688.11 per
15 Class Member and a recovery of \$8.21 per workweek assuming 100% participation in the Settlement.
16 Decl. Nordrehaug, ¶6.

17 The calculations to compensate for the amount due for the Class at the time of the mediation
18 were calculated by Berger Consulting, Plaintiffs’ damage expert. As to the Class whose claims are at
19 issue in this Action, Plaintiffs used the expert to analyze the data and determine the potential unpaid
20 wages for the employees. The maximum potential damages were calculated to be \$5,005,029 for the
21 alleged unpaid wages for off-the-clock work at 5 minutes per shift, \$3,003,021 for alleged meal period
22 damages based upon a 5% potential violation rate for all shifts worked, \$3,003,021 for alleged rest
23 period damages based upon the same 5% potential violation rate, \$540,660 for alleged unreimbursed
24 cell-phone expenses at \$5 per month. Decl. Nordrehaug, ¶6. As a result, the total damage valuation
25 was calculated such that Defendant was subject to a maximum damage claim in the amount of
26 \$11,551,731. As to potential penalties, Plaintiff calculated that potential waiting time penalties were
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1 a maximum of \$18,454,800, and potential maximum wage statement penalties were \$9,652,000.³
2 Defendant vigorously disputed Plaintiffs' calculations and exposure theories. Decl. Nordrehaug, ¶6.

3 Consequently, the Gross Settlement Amount of \$4,500,000 represents more than 38% of the
4 maximum value of the alleged damages at issue in this case at the time this Settlement was negotiated.⁴
5 Importantly, the recent decision that good faith belief of compliance by the employer in *Naranjo v.*
6 *Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065 (2024), could completely negate the claims for
7 waiting time and wage statement penalties, even if wages were owed to the Class. The above
8 maximum calculations should then be realistically risk-adjusted in consideration for both the risk of
9 class certification and the risk of establishing class-wide liability on all claims. Given the amount of
10 the settlement as compared to the potential value of claims in this case and the defenses asserted by
11 Defendant, this settlement is fair and reasonable.⁵ Clearly, the goal of this litigation has been met.
12 Decl. Nordrehaug, ¶6.

13 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
14 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
15 Defendant present serious threats to the claims of the Plaintiffs and the other Class Members.

16
17 ³ While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
18 226, at mediation Plaintiffs recognized that these claims were subject to additional, separate defenses
19 asserted by Defendant, including, a good faith dispute defense as to whether any premium wages for
20 meal or rest periods or other wages were owed given Defendant's position that Plaintiffs and Class
21 Members were properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584
22 (2010) ("There is no willful failure to pay wages if the employer and employee have a good faith
23 dispute as to whether and when the wages were due.").

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

27 ⁵ See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a
28 settlement where the settlement amount constituted approximately 25% of the estimated overtime
damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12
(N.D. Cal. 2015) (granting final approval where "the proposed Total Settlement Amount represents
approximately 10% of what class might have been awarded had they succeeded at trial."); *Viceral v.*
Mistras Grp., Inc., 2016 WL 5907869 (N.D. Cal. 2016) (approving wage and hour class action
settlement amounting to 8.1% of full 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 Defendant asserted that Defendant's policies and practices complied with all applicable labor laws.
2 Specifically, Defendant argued that its policies prohibit Class members from working off the clock and
3 Class Members were paid for all time worked. Defendants further argued that it paid all wages,
4 including minimum, overtime double time, and sick pay, at the correct rates of pay. Defendant also
5 argued that its meal and rest period policies fully complied with California law and that Defendant
6 provided Class Members with the opportunity to take their legally required meal and rest breaks.
7 Defendant further argued that the exemption applicable to the construction industry and employees
8 subject to valid collective bargaining agreements under Labor Code §§ 512 and 514 and the applicable
9 Wage Order negates Plaintiffs' overtime and the meal and rest period claims. Further, Defendant
10 argued that the PAGA claims of employees subject to a valid collective bargaining agreement fails
11 because Defendant is exempt, as a construction industry employer, from PAGA penalties under Labor
12 Code § 2699.6. Defendant further argued that there was no failure to pay for business expenses, Class
13 Members were not required to use their cell phones or purchase any supplies or tools to perform their
14 job duties, and any cell phone usage was merely convenient and voluntary such that reimbursement was
15 not legally required. Defendant argued that the Supreme Court decision in *Brinker v. Superior Court*,
16 53 Cal. 4th 1004 (2012), weakened Plaintiffs' claims, on liability, value, and class certifiability as to
17 the meal and rest period claims. Defendant also argued that based on its facially lawful practices,
18 Defendant acted in good faith and without willfulness, which if accepted would negate the claims for
19 waiting time penalties and/or inaccurate wage statements. See e.g. *Naranjo v. Spectrum Sec. Servs.,*
20 *Inc.*, 15 Cal. 5th 1056, 1065 (2024) ("if an employer reasonably and in good faith believed it was
21 providing a complete and accurate wage statement in compliance with the requirements of section 226,
22 then it has not knowingly and intentionally failed to comply with the wage statement law.") If
23 successful, Defendant's defenses could eliminate or substantially reduce the likelihood that laintiffs'
24 claims could be certified as a class action and any recovery to the Class. While Plaintiffs believe that
25 these defenses could be overcome, Defendant maintains these defenses have merit and therefore present
26 a serious risk to recovery by the Class. Decl. Nordrehaug, ¶ 24.

27 There was also a significant risk that, if the Action was not settled, Plaintiffs would be unable
28 to obtain a certified class and maintain the certified class through trial, and thereby not recover on

1 behalf of any employees other than themselves. At the time of the mediation, Defendant forcefully
2 opposed the propriety of class certification, arguing that individual issues precluded class certification.
3 Defendant argued that Plaintiffs were not adequate class representative and Defendant further argued
4 that because there were no unlawful policies or practices that all Class Members were subject to and
5 because Class Members were employed in various positions, locations, and departments, Plaintiffs'
6 claims were not appropriate for class treatment. Further, as demonstrated by the California Supreme
7 Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles
8 to overcome for a class-wide recovery even where the class has been certified. While other cases have
9 approved class certification in wage and hour claims, class certification in this action was hotly
10 disputed and the maintenance of a certified class through trial was by no means a foregone conclusion.
11 Decl. Nordrehaug, ¶ 25.

12 After arm's length negotiations between experienced and informed counsel, the Parties
13 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of
14 \$4,500,000. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

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

21 2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
22 (9th Cir. 2000)).

23 **3. The Settlement Does Not Improperly Grant Preferential Treatment To** 24 **Class Representatives or Segments Of The Class**

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

Plaintiffs will apply to the Court for Class Representative Service Payments in consideration
for their service and for the risks undertaken on behalf of the Class. (Agreement at ¶ 3.2(a).) Plaintiffs

1 performed their duties admirably by working with Class Counsel over the course of litigation, and is
2 giving a general release for this service award. Plaintiffs are also providing a general release far
3 beyond the release applicable to the Class. The Declarations of the Plaintiffs is submitted in support.
4 Decl. Nordrehaug at ¶27. At this stage, the requested service award is within the range of
5 reasonableness for purposes of preliminary approval. *See e.g. Andrews v. Plains All Am. Pipeline L.P.*,
6 2022 U.S. Dist. LEXIS 172183, at *11 (C.D. Cal. 2022) (finding that the requested service awards of
7 \$15,000 each are appropriate); *Reynolds v. Direct Flow Med., Inc.*, 2019 U.S. Dist. LEXIS 149865, at
8 *19 (N.D. Cal. 2019) (granting request for \$12,500 service award); *Mathein v. Pier 1 Imps. (U.S.), Inc.*,
9 2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500 where average class member
10 payment was \$351); *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D. Cal.
11 2008) (awarding \$25,000 service award to each of six plaintiffs in overtime class action); *Glass v. UBS*
12 *Fin. Servs.*, 2007 WL 221862, *16-17 (N.D. Cal. 2007) (awarding \$25,000 service award in overtime
13 class action and a pool of \$100,000 in enhancements). As explained in *Glass*, service awards are
14 routinely awarded to class representatives to compensate the employees for the time and effort
15 expended on the case, for the risk of litigation, for the fear of suing an employer and retaliation there
16 from, and to serve as an incentive to vindicate the statutory rights of all employees. 2007 WL 221862
17 at *16-17.

18 **4. The Stage Of The Proceedings Are Sufficiently Advanced To Permit** 19 **Preliminary Approval Of The Settlement**

20 The stage of the proceedings at which this Settlement was reached also militates in favor of
21 preliminary approval and ultimately, final approval of the Settlement. Class Counsel has conducted
22 a thorough investigation into the facts of the class action. Class Counsel began investigating the Class
23 Members' claims before the Action was filed, and during the course of litigation, and Class Counsel
24 and engaged in sufficient informal discovery to obtain necessary information. Class Counsel conducted
25 a review and analysis of the relevant documents and data. Class Counsel was also experienced with
26 these claims, as Class Counsel previously litigated and settled similar claims in other actions.
27 Accordingly, the agreement to settle did not occur until Class Counsel possessed sufficient information
28

1 to make an informed judgment regarding the likelihood of success on the merits and the results that
2 could be obtained through further litigation. Decl. Nordrehaug at ¶28.

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

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

9 Plaintiffs contend that the proposed settlement meet all of the requirements for class
10 certification under California Code of Civil Procedure § 382 as demonstrated below, and therefore, the
11 Court may appropriately approve the Class as defined in the Agreement. This Court should
12 conditionally certify the Class for settlement purposes only, defined as follows:

13 All individuals who are or previously were employed by Defendant who were classified
14 as non-exempt in the State of California at any time during the Class Period.

(Agreement at ¶ 2.5.)

15 The Class Period is from December 11, 2019 through May 27, 2025. (Agreement at ¶ 2.13.)

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

17 Plaintiffs seek certification of this Class for settlement purposes under California Code of Civil
18 Procedure § 382. The California Supreme Court has summarized the standard for determining whether
19 class certification is appropriate as follows:

20 Code of Civil Procedure Section 382 authorizes class actions “when the question is one
21 of a common or general interest, of many persons, or when the parties are numerous,
22 and it is impracticable to bring them all before the court....” The party seeking
23 certification has the burden to establish the existence of both an ascertainable class and
24 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.

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

26 While Defendant reserves all rights to dispute that the Plaintiffs can satisfy these requirements,
27 the Parties agree that Defendant will not dispute that these requirements may be satisfied in this case
28 for purposes of settlement only and therefore, the proposed Class should be certified for purposes of

1 settlement only. (Agreement at ¶¶ 1.1, 16.2.)

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

3 Plaintiffs bring this action on behalf of a Class of non-exempt employees of Defendant during
4 the Class Period. Plaintiffs assert that all of these individuals are ascertainable because the class
5 members can readily be determined through examination of Defendant's files. Given that the Class
6 consists of approximately 4,096 individuals, Plaintiffs maintain that numerosity is clearly satisfied.
7 *See Bowles v. Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members); *Rose v. City of Hayward*,
8 126 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.) Here,
9 Plaintiffs assert that the 4,096 current and former employees that comprise the Class can be identified
10 based on records and are sufficiently numerous for class certification. Decl. Nordrehaug at ¶30.

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

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

17 Commonality exists if there is a predominant common legal question regarding how an
18 employer's policies impact its employees. *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524,
19 1536 (2008) ("[T]he common legal question remains the overall impact of Diva's policies on its
20 drivers.") Whether the plaintiff is likely to prevail on their theory of recovery is irrelevant at the
21 certification stage since the question is "essentially a procedural one that does not ask whether an action
22 is legally or factually meritorious." *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2003).

23 Here, Plaintiffs contends that common questions of law and fact are present, specifically the
24 common questions of whether Defendant's practices were lawful, whether Defendant failed to provide
25 meal and rest periods to Class Members, whether Class members were lawfully compensated for all
26 hours worked, whether Defendant failed to provide required expense reimbursement, and whether Class
27 Members are entitled to damages and penalties as a result of these practices. Plaintiffs contend that
28 certification of this Class is appropriate because Defendant allegedly engaged in uniform practices with

1 respect to the Class Members. As a result, Plaintiffs believe these common questions of liability could
2 be answered on a class wide basis. Decl. Nordrehaug, ¶30. Defendant disputes that common questions
3 predominate but will not oppose such a finding for purposes of this Settlement only.

4 **D. The Claims of the Plaintiffs Are Typical of the Class Claims**

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

11 In this Action, Plaintiffs contend that the typicality requirement is fully satisfied. Plaintiffs
12 contend that, like every other member of the Class, they were employed by Defendant as non-exempt
13 employees, and, like every other member of the Class, were subject to the same employment practices.
14 Plaintiffs further contend that, like every other member of the Class, they also claim owed
15 compensation as a result of the Defendant’s uniform company policies and practices. Thus, Plaintiffs
16 believe that the claims of Plaintiffs and the members of the Class arise from the same course of conduct
17 by Defendant, involve the same issues, and are based on the same legal theories. Decl. Nordrehaug at
18 ¶30. Plaintiffs assert that the typicality requirement is met as to the common issues presented in this
19 case. Defendant disputes that the typicality requirement is satisfied but do not oppose a finding of
20 typicality for purposes of this Settlement only.

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

22 Plaintiffs contend that the Class Members are adequately represented here because Plaintiffs
23 and representing counsel (a) do not have any conflicts of interest with other class members, and (b) will
24 prosecute the case vigorously on behalf of the class. *Hanlon*, 150 F.3d at 1020. First, Plaintiffs are
25 well aware of their duties as the representatives of the Class and have actively participated in the
26 prosecution of this case to date. Plaintiffs effectively communicated with Class Counsel, provided
27 documents and information to Class Counsel, and participated in the investigation and resolution of the
28 Action. The personal involvement of the Plaintiffs was essential to the prosecution of the Action and

1 the monetary settlement reached. Second, Plaintiffs retained competent counsel who are experienced
2 in employment class actions and who have no conflicts. Decl. Nordrehaug at ¶ 31. Third, there is no
3 antagonism between the interests of the Plaintiffs and those of the Class. Both the Plaintiffs and the
4 Class Members seek monetary relief under the same set of facts and legal theories. Under such
5 circumstances, there can be no conflicts of interest, and adequacy of representation is satisfied. *Reaves*
6 *v. Ketoro, Inc.*, 2020 U.S. Dist. Lexis 167926, *23 (C.D. Cal. 2020).

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

8 To certify a class, the Court must also determine that a class action is superior to other available
9 methods for the fair and efficient adjudication of the controversy. “Where classwide litigation of
10 common issues will reduce litigation costs and promote greater efficiency, a class action may be
11 superior to other methods of litigation.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir.
12 1996). As the Supreme Court has previously explained:

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

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

18 Here, Plaintiffs contend that a class action is the superior mechanism for resolution of the
19 claims as pled by the Plaintiffs. While Defendant disputes that the superiority requirement is satisfied,
20 Defendant does not dispute a finding of superiority for purposes of this Settlement only.

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

22 The Court has broad discretion in approving a practical notice program. *7- Eleven Owners for*
23 *Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1164 (2000). The Parties have agreed
24 upon procedures by which the Class Members will be provided with written notice of the Settlement
25 similar to that approved and utilized in hundreds of class action settlements and the Class Notice
26 includes all relevant information. (See Exhibit “A” to the Agreement.) Decl. Nordrehaug at ¶32. The
27 Class Notice will explain that the Class Members shall have sixty (60) days from the date that the Class
28 Notice is mailed to them (the “Response Deadline”) to request exclusion (opt-out) or to submit a
written objection. (Agreement at ¶¶ 2.45, 11.4-11.6.) Class Members shall be given the opportunity

1 to object to the Settlement and/or the attorneys' fees and expenses, and to appear at the Final Approval
2 Hearing. (Agreement at ¶ 11.7.) This notice program was designed to meaningfully reach the Class
3 Members and it advises them of all pertinent information concerning the Settlement. Decl. Nordrehaug
4 at ¶32. The distribution of the Class Notice satisfies the requirements of due process, is the best notice
5 practicable under the circumstances, and complies with Rules of Court 3.766 and 3.769(f).

6 **VII. CONCLUSION**

7 Plaintiff respectfully requests that the Court preliminarily approve the proposed settlement and
8 sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the final
9 approval hearing for the proposed date of December 3, 2025.

10 Dated: August 14, 2025

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

11 By: /s/ Kyle Nordrehaug
12 Kyle R. Nordrehaug, Esq., Attorney for Plaintiffs
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