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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES**

JOEL VELEZ, an individual, on behalf of
himself and on behalf of all persons
similarly situated,

Plaintiffs,

vs.

HERBER AIRCRAFT SERVICE, INC., a
California Corporation; and DOES 1
through 50, inclusive,

Defendants.

CASE NO.: **24STCV12247**

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

Hearing Date: February 24, 2026
Hearing Time: 10:30 a.m.

Judge: Hon. Carolyn B. Kuhl
Dept: SS-12

Action Filed: May 15, 2024
Trial Date: Not set

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1 **I. INTRODUCTION**

2 Plaintiff Joel Velez (“Plaintiff”) respectfully submits this memorandum in support of the
3 unopposed motion for preliminary approval of the proposed class action settlement with Defendant
4 Herber Aircraft Service, Inc. (“Defendant”) which seeks 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 are or previously were
7 employed by Defendant who were classified as non-exempt in the State of California at any time during
8 the Class Period but excluding those individuals who signed individual release agreements”; (3)
9 provisionally appointing Plaintiff 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 LLC as the Administrator, and (8) scheduling a final
13 approval hearing date that is 120 days from preliminary approval, to consider Plaintiff’s motion for
14 final approval of the settlement and for approval of attorneys’ fees, expenses and service award.
15 Plaintiff and Defendant (collectively the “Parties”) have reached a full and final settlement of the
16 above-captioned action, which is embodied in the Class Action and PAGA Settlement Agreement
17 (“Agreement”) filed concurrently with the Court.¹ A copy of the fully executed Agreement is attached
18 as Exhibit #1 to the Declaration of Kyle Nordrehaug (“Decl. Nordrehaug”), served and filed herewith.

19 As consideration for this Settlement, the non-reversionary Gross Settlement Amount of Four
20 Hundred Sixty-Four Thousand Fifty Dollars (\$464,050) (the “Gross Settlement Amount”) is to be paid
21 by Defendant, as set forth in the Agreement. The Gross Settlement Amount will settle all issues
22 pending in the Action between the Parties and will be made in full and final settlement of the Released
23 Class Claims in exchange for the payments to Participating Class Members from the Net Settlement
24 Amount, and includes (a) the costs of administration of the settlement, (b) all attorneys' fees and costs,
25 (c) the Class Representative Service Payments, and (d) the PAGA Penalties payment allocated 75% to
26 the LWDA and 25% to the Aggrieved Employees. (Agreement at ¶ 1.22.) Decl. Nordrehaug at ¶3. The
27

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

following is a table of the key financial terms of the Settlement and the proposed deductions:

\$464,050 (Gross Settlement Amount)

- \$12,500 (Plaintiff's proposed service awards - not to exceed amount)
- \$30,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- \$154,683 (Class Counsel Fees Payment - not to exceed 1/3 of settlement)
- \$10,000 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
- \$10,000 (Administration Expenses Payment - not to exceed amount)

\$246,867 (Net Settlement Amount)

Based upon 76 Class Members who collectively worked 7,610 workweeks (Agreement at ¶ 4.1), the Gross Settlement Amount provides an average value of \$6,105 per Class Member and \$60 per workweek and after deductions, the Net Settlement Amount provides an average recovery of \$3,248.25 per Class Member and a recovery of \$32.43 per workweek. Decl. Nordrehaug at ¶6.

On May 12, 2025, the Parties participated in an all-day mediation session presided over by Tagore Subramaniam, Esq., a respected and experienced mediator of wage and hour class actions. Following this mediation, the Parties agreed on the basic terms of a settlement pursuant to a mediator's proposal which was memorialized in the form of a Memorandum of Understanding. Decl. Nordrehaug at ¶5. The Settlement is fair, reasonable, and adequate, and should be preliminarily approved because there is a substantial monetary payment, and there are significant litigation and class-certification risks. Therefore, Plaintiff respectfully requests that this Court grant preliminary approval of the Agreement and enter the proposed order submitted herewith.

II. DESCRIPTION OF THE SETTLEMENT

The Gross Settlement Amount is Four Hundred Sixty-Four Thousand Fifty Dollars (\$464,050). (Agreement at ¶ 1.22.) The Declaration of Bradley Lebow verifies that the escalator provision was not triggered. 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 allocated 75% to the LWDA PAGA Payment and 25% to the Individual PAGA Payments. (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 Defendant shall fund the Gross Settlement Amount and the amount necessary to pay payroll
2 taxes thereon no later than 14 days after the Effective Date. (Agreement at ¶ 4.3.) The distribution of
3 Individual Class Payments to Participating Class Members will be made within 14 days after Defendant
4 funds the Gross Settlement Amount. (Agreement at ¶ 5.1.) Decl. Nordrehaug at ¶16.

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

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

24 Participating Class Members must cash their Individual Class Payment check within 180 days
25 after it is mailed. (Agreement at ¶ 5.2.) Any settlement checks not cashed within 180 days will be
26 voided and any funds represented by such checks sent to the California Controller's Unclaimed Property
27 Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements
28 of California Code of Civil Procedure Section 384, subd. (b). (Agreement at ¶ 5.4.) Decl. Nordrehaug

1 at ¶19.

2 Subject to Court approval, the Parties have agreed on Apex Class Action LLC to administer the
3 settlement in this action (“Administrator”). (Agreement at ¶ 1.2.) The Administrator will be paid for
4 settlement administration in an amount not to exceed \$10,000. (Agreement at ¶ 3.2(c).) Apex Class
5 Action provided an estimate of \$6,500 for administration expenses as set forth in the declaration from
6 Apex Class Action, submitted herewith. Decl. Nordrehaug at ¶20.

7 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
8 to exceed one-third of the Gross Settlement Amount, as the Class Counsel Fees Payment. (Agreement
9 at ¶ 3.2(b).) Class Counsel will also be allowed to apply separately for an award of Class Counsel
10 Litigation Expenses Payment in an amount not to exceed \$30,000. (Agreement at ¶ 3.2(b).) Subject
11 to Court approval, the Agreement provides for a payment of no more than \$12,500 to the Plaintiff as
12 his Class Representative Service Payment. (Agreement at ¶ 3.2(a).) Decl. Nordrehaug at ¶21.

13 Subject to Court approval, the PAGA Penalties will be paid from the Gross Settlement Amount
14 for PAGA penalties under the California Private Attorneys General Act, Cal. Labor Code Section 2698,
15 *et seq.* (“PAGA”). The PAGA Penalties are \$10,000. (Agreement at ¶¶ 1.34 and 3.2(d).) Pursuant to
16 the express requirements of Labor Code § 2699(i), the PAGA Payment shall be allocated as follows:
17 75% shall be allocated to the Labor Workforce Development Agency (“LWDA”) as its share of the
18 civil penalties and 25% allocated to the Individual PAGA Payments to be distributed to the Aggrieved
19 Employees based on the number of their respective PAGA Pay Periods.² (Agreement at ¶ 3.2(d).) As
20 set forth in the accompanying proof of service, the LWDA has been served with this motion and the
21 Agreement. Decl. Nordrehaug at ¶22.

22 **III. CASE BACKGROUND**

23 The description of the case and claims, along with the procedural history is set forth in the
24 Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and the
25 exchange of documents and information in connection with the Action over more than one year which
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27
28 ² The PAGA claim was initiated by the PAGA Notice prior to June 2024, and therefore the prior
version of Labor Code ¶2699 applies to the 75/25 allocation.

permitted Class Counsel to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and 14. The Parties participated in mediation on May 12, 2025 with Tagore Subramaniam, Esq., which after arms' length negotiations during the mediation, resulted in this Settlement. Decl. Nordrehaug, ¶12.

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

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

Preliminary approval is the first of three steps that comprise the approval procedure for settlements of class actions. The second step is the dissemination of notice of the settlement to all class members. The third step is a final settlement approval hearing, at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement may be presented, and class members may be heard regarding the settlement. *See Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 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).³ 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."

³ 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 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 245 (2001) (citation omitted); see also *Cho v.*
2 *Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th 734, 742-45 (2009) (upholding trial court's
3 determination that settlement was "fair, reasonable and adequate" where the settlement "provided
4 valuable benefits to the class ... that were 'particularly valuable in light of the risks plaintiff would have
5 faced if she proceeded to litigate her case.'"); *Newberg*, 3d Ed., §11.41, p.11-88. However, the ultimate
6 question of whether the proposed settlement is fair, reasonable, and adequate is made after notice of
7 the settlement is given to the class members and a final settlement hearing is held by the Court.

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

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

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

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

25 A number of factors are to be considered in evaluating a settlement for purposes of preliminary
26 approval. In determining whether to grant preliminary approval, the court considers whether the "(1)
27 the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, (2)
28 has no obvious deficiencies, (3) does not improperly grant preferential treatment to class representatives

1 or segments of the class, and (4) falls within the range of possible approval.” *In re Tableware Antitrust*
2 *Litig.*, 484 F.Supp. 2d 1078, 1079 (N.D. Cal. 2007). Courts hold that “a presumption of fairness exists
3 where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery
4 are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
5 litigation; and (4) the percentage of objectors is small.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.
6 App. 4th 116, 128 (2008). Here, the Settlement meets all of these criteria for preliminary approval and
7 therefore the presumption applies.

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

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

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

24 The Parties attended an arms-length mediation session with Tagore Subramaniam, Esq., a
25 respected and experienced mediator of wage and hour class actions, in order to reach this Settlement.
26 In preparation for the mediation, Defendant provided Class Counsel with payroll, timekeeping and
27 employment data and other information concerning the Class Members, various internal documents,
28 and other compensation and employment-related materials. Class Counsel analyzed the data with the

1 assistance of damages expert Berger Consulting and prepared and submitted a mediation brief to the
2 mediator. The final settlement terms were negotiated and set forth in the Agreement now presented for
3 this Court's approval. Decl. Nordrehaug at ¶ 5. Importantly, Plaintiff and Class Counsel believe that
4 this Settlement is fair, reasonable, and adequate.

5 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant is
6 Four Hundred Sixty-Four Thousand Fifty Dollars (\$464,050). The Settlement is all-in with no
7 reversion to Defendant and no need to submit a claim form. Decl. Nordrehaug at ¶ 3.

8 Class Counsel has conducted an investigation into the facts of the class action. Informal
9 discovery was obtained, which included the production of hundreds of pages documents and data.
10 Class Counsel engaged in a thorough review and analysis of the relevant documents and data with the
11 assistance of an expert. Accordingly, the agreement to settle did not occur until Class Counsel
12 possessed sufficient information to make an informed judgment regarding the likelihood of success on
13 the merits and the results that could be obtained through further litigation. In addition, Class Counsel
14 previously negotiated settlements with other employers in actions involving nearly identical issues and
15 analogous defenses. Based on the foregoing data and their own independent investigation, evaluation
16 and experience, Class Counsel believes that the settlement with Defendant on the terms set forth in the
17 Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known
18 facts and circumstances, including the risk of significant delay, defenses asserted by Defendant, and
19 potential appellate issues. Decl. Nordrehaug at ¶ 14.

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

27 Here, there can be no dispute that the litigation has been hard-fought with aggressive and
28 capable advocacy on both sides. The Parties were represented by experienced and capable counsel who

1 zealously advocated their positions. Accordingly, “[t]here is likewise every reason to conclude that
2 settlement negotiations were vigorously conducted at arms’ length and without any suggestion of undue
3 influence.” *In re Wash. Public Power Supply System Sec. Litig.*, 720 F. Supp. at 1392.

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

6 The proposed Settlement herein has no "obvious deficiencies" and is well within the range of
7 possible approval. All Class Members will receive an opportunity to participate in the Settlement and
8 receive payment according to the same formula. (Agreement at ¶ 3.2(e).) Based upon 76 Class
9 Members who collectively worked 7,610 workweeks (Agreement at ¶ 4.1), the Gross Settlement
10 Amount provides an average value of \$6,105 per Class Member and \$60 per workweek and after
11 deductions, the Net Settlement Amount provides an average recovery of \$3,248.25 per Class Member
12 and a recovery of \$32.43 per workweek. Decl. Nordrehaug, ¶6.

13 The calculations to compensate for the amount due for the Class at the time of the mediation
14 were calculated by Berger Consulting, Plaintiff’s damage expert. As to the Class whose claims are at
15 issue in this Action, Plaintiff retained this expert to analyze the data and determine the potential unpaid
16 wages for the employees. The maximum potential damages were calculated to be \$416,040 for the
17 alleged unpaid wages due to off-the-clock work at 1 hour per week, \$51,206 for the alleged underpaid
18 overtime wage based on the alleged miscalculation of the regular rate, \$18,003 for the alleged unpaid
19 meal break premiums and sick pay based on the miscalculation of the regular rate, \$157,039 for alleged
20 meal period damages based upon a 12.5% potential violation rate for shifts observed in the time records
21 and after deduction of meal premiums paid by Defendant, and \$1,428,988 for alleged rest period
22 damages based upon a 100% potential violation rate, \$12,115 for alleged unreimbursed business
23 expenses for personal cell phone usage at \$5 per month. Decl. Nordrehaug, ¶6. As a result, the total
24 damage valuation was calculated that Defendant was subject to a maximum damage claim in the
25 amount of \$2,083,391. As to potential penalties, Plaintiff calculated that potential waiting time
26 penalties were a maximum of \$483,130, and potential maximum wage statement penalties were
27
28

1 \$126,126.⁴ Defendant vigorously disputed Plaintiff's calculations and exposure theories. See Decl.
2 Nordrehaug, at ¶6 for additional details as to the valuation of the claims.

3 Consequently, the Gross Settlement Amount of \$464,050 represents more than 22% of the
4 maximum value of the alleged damages at issue in this case at the time this Settlement was negotiated.⁵
5 This valuation likely overstates the exposure for two reasons: (1) the actual workweeks were less (82%)
6 of the workweeks figure used for the valuation, and (2) the rest period valuation assumes a 100%
7 violation rate, when in reality Class Members likely received some of their rest breaks. Importantly,
8 the recent decision that good faith belief of compliance by the employer in *Naranjo v. Spectrum Sec.*
9 *Servs., Inc.*, 15 Cal. 5th 1056, 1065 (2024), could completely negate the claims for waiting time and
10 wage statement penalties, even if wages were owed to the Class. The above maximum calculations
11 should then be adjusted in consideration for both the risk of class certification and the risk of
12 establishing class-wide liability on all claims. Given the amount of the settlement as compared to the
13 potential value of claims in this case and the defenses asserted by Defendant, this settlement is fair and
14 reasonable.⁶ Clearly, the goal of this litigation has been met. Decl. Nordrehaug, ¶6.

15
16 ⁴ While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
17 226, at mediation Plaintiff recognized that these claims were subject to additional, separate defenses
18 asserted by Defendant, including, a good faith dispute defense as to whether any premium wages for
19 meal or rest periods or other wages were owed given Defendant's position that Plaintiff and Class
20 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.").

21 ⁵ 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 ⁶ 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."); *Dunleavy*
27 *v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000) (affirming approval
of a class settlement which represented "roughly one-sixth of the potential recovery".) See also *Viceral*
28 *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%")

1 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
2 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
3 Defendant present serious threats to the claims of the Plaintiff and the other Class Members. Defendant
4 asserted that Defendant's practices complied with all applicable Labor laws. Defendant argued that
5 Class Members were paid for all time worked and that all work time was properly recorded and
6 compensated. Defendant contends that its meal and rest period policies fully complied with California
7 law and Defendant did not fail to provide the opportunity for legally required meal and rest breaks.
8 Defendant could argue that the payment of meal period premiums is evidence of its lawful practices.
9 Defendant contends that there was no failure to pay for business expenses and any cell phone usage was
10 merely convenient and voluntary such that reimbursement was not legally required. Finally, Defendant
11 could argue that the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012),
12 weakened Plaintiff's claims, on liability, value, and class certifiability as to the meal and rest period
13 claims. Defendant also argues that based on their facially lawful practices, Defendant acted in good
14 faith and without willfulness, which if accepted would negate the claims for waiting time penalties
15 and/or inaccurate wage statements. See e.g. *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056,
16 1065 (May 6, 2024) ("if an employer reasonably and in good faith believed it was providing a complete
17 and accurate wage statement in compliance with the requirements of section 226, then it has not
18 knowingly and intentionally failed to comply with the wage statement law.") Defendant's defenses
19 could eliminate or substantially reduce any recovery to the Class. While Plaintiff believes that these
20 defenses could be overcome, Defendant maintains these defenses have merit and therefore present a
21 serious risk to recovery by the Class. Decl. Nordrehaug, ¶ 24.

22 There was also a significant risk that, if the Action was not settled, Plaintiff would be unable
23 to obtain a certified class and maintain the certified class through trial, and thereby not recover on
24 behalf of any employees other than themselves. At the time of the mediation, Defendant forcefully
25 opposed the propriety of class certification, arguing that individual issues precluded class certification.
26 Further, as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National*
27 _____
28 of maximum valuation).

1 *Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class-wide recovery even
2 where the class has been certified. While other cases have approved class certification in wage and
3 hour claims, class certification in this action was hotly disputed and the maintenance of a certified class
4 through trial was by no means a foregone conclusion. Decl. Nordrehaug, ¶ 25.

5 After arm's length negotiations between experienced and informed counsel, the Parties
6 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of
7 \$464,050. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

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

14 2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
15 (9th Cir. 2000)).

16 3. The Settlement Does Not Improperly Grant Preferential Treatment To 17 Class Representatives or Segments Of The Class

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

23 Plaintiff will apply to the Court for a Class Representative Service Payment in consideration
24 for his service and for the risks undertaken on behalf of the Class. (Agreement at ¶ 3.2(a).) Plaintiff
25 performed his duties admirably by working with Class Counsel over the course of litigation. The
26 Declaration of the Plaintiff is submitted in support. Decl. Nordrehaug at ¶27. At this stage, the not to
27 exceed amount for the requested service award is within the accepted range of awards for purposes of
28 preliminary approval, subject to the Court's determination at final approval. *See e.g. Andrews v. Plains*
All Am. Pipeline L.P., 2022 U.S. Dist. LEXIS 172183, at *11 (C.D. Cal. 2022) (finding that the
requested service awards of \$15,000 each are appropriate); *Reynolds v. Direct Flow Med., Inc.*, 2019
U.S. Dist. LEXIS 149865, at *19 (N.D. Cal. 2019) (granting request for \$12,500 service award);

1 *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500
2 where average class member payment was \$351); *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008
3 WL 4473183, *7 (S.D.Cal. Oct. 06, 2008) (awarding \$25,000 service award to each of six plaintiffs
4 in overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D. Cal. 2007)
5 (awarding \$25,000 service award in overtime class action and a pool of \$100,000 in enhancements).
6 As explained in *Glass*, service awards are routinely awarded to class representatives to compensate the
7 employees for the time and effort expended on the case, for the risk of litigation, for the fear of suing
8 an employer and retaliation there from, and to serve as an incentive to vindicate the statutory rights of
9 all employees. 2007 WL 221862 at *16-17.

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

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

22 Based on the foregoing data and their own independent investigation and evaluation, Class
23 Counsel is of the opinion that the Settlement with Defendant for the consideration and on the terms set
24 forth in the Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light
25 of all known facts and circumstances, including the risk of significant delay, defenses asserted by
26 Defendant, and numerous potential appellate issues. There can be no doubt that Counsel possessed
27 sufficient information to make an informed judgment regarding the likelihood of success on the merits
28 and the results that could be obtained through further litigation. Decl. Nordrehaug at ¶29.

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

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

6 All individuals who are or previously were employed by Defendant who were classified
7 as non-exempt in the State of California at any time during the Class Period but
excluding those individuals who signed individual release agreements.

8 (Agreement at ¶ 1.5.)

9 The Class Period is from May 15, 2020 to May 12, 2025. (Agreement at ¶ 1.13.)

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

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

14 Code of Civil Procedure Section 382 authorizes class actions “when the question is one
15 of a common or general interest, of many persons, or when the parties are numerous,
and it is impracticable to bring them all before the court....” The party seeking
16 certification 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
17 “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.

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

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

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

24 Plaintiff brings this action on behalf of a Class of non-exempt employees of Defendant during
25 the Class Period. Plaintiff asserts that all of these individuals are ascertainable because the class
26 members can readily be determined through examination of Defendant’s files. Given that the Class
27 consists of 76 individuals, Plaintiff maintains that numerosity is clearly satisfied. *See Bowles v.*
28

1 *Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose v. City of*
2 *Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.)
3 Here, Plaintiff asserts that the 76 current and former employees that comprise the Class can be
4 identified based on Defendant's records and are sufficiently numerous for class certification. Decl.
5 Nordrehaug at ¶30.

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

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

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

18 Here, Plaintiff contends that common questions of law and fact are present, specifically the
19 common questions of whether Defendant's employment practices were lawful, whether Defendant
20 failed to provide meal and rest periods to Class Members, whether Defendant miscalculated the regular
21 rate when paying wages, whether Class Members were lawfully compensated for all hours worked,
22 whether Defendant failed to provide required expense reimbursement, and whether Class Members are
23 entitled to damages and penalties as a result of these practices. Plaintiff contends that certification of
24 this Class is appropriate because Defendant allegedly engaged in uniform practices with respect to the
25 Class Members. As a result, these common questions of liability could be answered on a class wide
26 basis. Decl. Nordrehaug, ¶30. Defendant disputes that common questions predominate but will not
27 oppose such a finding for purposes of this Settlement only.

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

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

7 In this Action, Plaintiff contends that the typicality requirement is fully satisfied. Plaintiff, like
8 every other member of the Class, was employed by Defendant as a non-exempt employee, and, like
9 every other member of the Class, was subject to the same employment practices. Plaintiff, like every
10 other member of the Class, also claims owed compensation as a result of the Defendant’s uniform
11 company policies and practices. Thus, the claims of Plaintiff and the members of the Class arise from
12 the same course of conduct by Defendant, involve the same issues, and are based on the same legal
13 theories. Decl. Nordrehaug at ¶30. For purposes of settlement, Plaintiff asserts that the typicality
14 requirement is met as to the common issues presented in this case. Defendant does not oppose a finding
15 of typicality for purposes of this Settlement only.

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

17 Plaintiff contends that the Class Members are adequately represented here because Plaintiff and
18 representing counsel (a) do not have any conflicts of interest with other class members, and (b) will
19 prosecute the case vigorously on behalf of the class. *Hanlon*, 150 F.3d at 1020. This requirement is
20 met here. First, Plaintiff is well aware of his duties as the representative of the Class and has actively
21 participated in the prosecution of this case to date. Plaintiff effectively communicated with Class
22 Counsel, provided documents and information to Class Counsel, and participated in the investigation
23 and resolution of the Action. The personal involvement of the Plaintiff was essential to the prosecution
24 of the Action and the monetary settlement reached. Second, Plaintiff retained competent counsel who
25 are experienced in employment class actions and who have no conflicts. Decl. Nordrehaug at ¶ 31.
26 Third, there is no antagonism between the interests of the Plaintiff and those of the Class. Both the
27 Plaintiff and the Class Members seek monetary relief under the same set of facts and legal theories.
28 Under such circumstances, there can be no conflicts of interest, and adequacy of representation is

1 satisfied. *Reaves v. Ketoro, Inc.*, 2020 U.S. Dist. Lexis 167926, *23 (C.D. Cal. 2020). Defendant
2 disputes that the adequacy requirement is satisfied but will not oppose such a finding for purposes of
3 this Settlement only.

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

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

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

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

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

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

21 The Court has broad discretion in approving a practical notice program. The Parties have
22 agreed upon procedures by which the Class Members will be provided with written notice of the
23 Settlement similar to what has been approved and utilized in hundreds of class action settlements. In
24 accordance with the Agreement, Defendant will provide to the Administrator a confidential electronic
25 spreadsheet containing the Class Data. (Agreement at ¶ 4.2.) Within 14 days after receiving the Class
26 Data, the Administrator will mail the Class Notice to all Class Members via first-class U.S. Mail using
27 the most current mailing address information available. (Agreement at ¶ 8.4(b).)

28 The Class Notice, drafted jointly and agreed upon by the Parties through their respective counsel
and to be approved by the Court, is based on the Los Angeles model form and includes all relevant
information. (See Exhibit “A” to the Agreement.) A Spanish translation of the Class Notice will be

1 included in the mailing. (Agreement at ¶ 1.11.) The Class Notice will include, among other
2 information: (i) information regarding the Action; (ii) the impact on the rights of the Class Members
3 if they do not opt out, including a description of the applicable release; (iii) information to the Class
4 Members regarding how to opt out and how to object to the Settlement; (iv) the estimated Individual
5 Class Payment for each of the Class Members; (iii) the amount of attorneys' fees and expenses to be
6 sought; (v) the amount of the Plaintiff's service award request; and (vi) the anticipated expenses of the
7 Administrator. Decl. Nordrehaug at ¶32.

8 The Class Notice will state that the Class Members shall have sixty (60) days from the date that
9 the Class Notice is mailed to them (the "Response Deadline") to request exclusion (opt-out) or to
10 submit a written objection. (Agreement at ¶¶ 1.42, 8.5, 8.7.) Class Members shall be given the
11 opportunity to object to the Settlement and/or requests for attorneys' fees and expenses and to appear
12 at the Final Approval Hearing. (Agreement at ¶ 8.7.) Class Members who do not submit a timely and
13 proper request to opt-out will automatically receive a payment of their Individual Class Payment. This
14 notice program was designed to meaningfully reach the Class Members and it advises them of all
15 pertinent information concerning the Settlement. Decl. Nordrehaug at ¶32. The mailing and
16 distribution of the Class Notice satisfies the requirements of due process and is the best notice
17 practicable under the circumstances and complies with Rules of Court 3.766 and 3.769(f).

18 VII. CONCLUSION

19 Plaintiff respectfully requests that the Court preliminarily approve the proposed settlement, sign
20 the proposed Preliminary Approval Order, which is submitted herewith, and schedule the final approval
21 hearing a date that is at least one hundred twenty (120) days from the date of Preliminary Approval.

22 Dated: November 5, 2025

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

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