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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF CONTRA COSTA

KRISTINA MURDOCK, NOEL HUDSON,
and ALEXANDRA SOTO on behalf of
themselves and on behalf of all persons
similarly situated,

Plaintiffs,

vs.

ST. JUDE MEDICAL CENTER, a California
Corporation; ST. JUDE HOSPITAL, a
California Corporation; and DOES 1 through
50, inclusive,

Defendants.

CASE NO.: **MSC21-02047**

[Consolidated with Case No. MSC21-02137]

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

Hearing Date: March 28, 2024

Hearing Time: 9:00 a.m.

Judge: Hon. Charles S. Treat
Dept.: 12

Action Filed: October 1, 2021

Trial Date: Not set

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1 **I. INTRODUCTION**

2 Plaintiffs Kristina Murdock, Noel Hudson and Alexandra Soto (“Plaintiffs”) respectfully submit
3 this memorandum in support of the unopposed motion for preliminary approval of the proposed class
4 action settlement with Defendants Aspen Surgery Center, LLC and Surgery Partners, Inc.
5 (“Defendants”), and seek entry of an order: (1) preliminarily approving the proposed settlement of this
6 class action with Defendants; (2) for settlement purposes only, conditionally certifying the Class, which
7 is comprised of “all individuals who are or previously worked for Defendants in California who were
8 classified as non-exempt at any time during the Class Period”, which is October 1, 2017 to June 11,
9 2023 (excluding non-exempt hourly hospital workers employed by Heart Hospital of BK, LLC); (3)
10 provisionally appointing Plaintiffs as the representatives of the Class; (4) provisionally appointing
11 Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit Bhowmik of Blumenthal Nordrehaug
12 Bhowmik De Blouw LLP as Class Counsel; (5) approving the form and method for providing class-
13 wide notice; (6) directing that notice of the proposed settlement be given to the class; (7) appointing
14 ILYM Group as Administrator, and (8) scheduling a final approval hearing date, for the proposed date
15 of August 15, 2024 which is at least 120 days from preliminary approval, to consider Plaintiffs’ motion
16 for final approval of the settlement and for approval of attorneys’ fees and expenses. Plaintiffs and
17 Defendants (collectively the “Parties”) have reached a full and final settlement of the above-captioned
18 action, which is embodied in the Class Action and PAGA Settlement Agreement (“Agreement”) filed
19 concurrently with the Court.¹ A copy of the fully executed Agreement is attached as Exhibit #1 to the
20 Declaration of Kyle Nordrehaug (“Decl. Nordrehaug”), served and filed herewith. The form of the
21 Agreement is based upon the Los Angeles County Superior Court model form for a class and PAGA
22 settlement.

23 As consideration for this Settlement, the non-reversionary Gross Settlement Amount of Three
24 Million Dollars (\$3,000,000) (the “Gross Settlement Amount”) is to be paid by Defendants, as set forth
25 in the Agreement. The Gross Settlement Amount will settle all issues pending in the Action between
26 the Parties and will be made in full and final settlement of the Released Class Claims in exchange for
27

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

1 the payments to Participating Class Members from the Net Settlement Amount, and includes (a) the
2 costs of administration of the settlement, (b) all attorneys' fees and costs, (c) Class Representative
3 Service Payments, and (d) the PAGA Penalties payment allocated 75% to the LWDA and 25% to the
4 Aggrieved Employees. (Agreement at ¶ 1.22.) Decl. Nordrehaug at ¶3.

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

7 **\$3,000,000** (Gross Settlement Amount)

- 8 - \$30,000 (Plaintiffs' proposed service award not to exceed \$10,000 each)
- 9 - \$22,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- 10 - \$1,000,000 (Class Counsel Fees Payment - not to exceed 1/3 of settlement)
- 11 - \$60,000 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
- 12 - \$25,000 (Administration Expenses Payment - not to exceed amount)

13 **\$1,863,000** (Net Settlement Amount)

14 Based upon 1,681 Class Members who collectively worked 161,730 Workweeks (Agreement at ¶ 4.1),
15 the Gross Settlement Amount provides an average value of \$1,784 per Class Member and \$18 per
16 Workweek and after deductions the Net Settlement Amount provides an average recovery of \$1,108.26
17 per Class Member and a recovery of \$11.51 per Workweek. Decl. Nordrehaug at ¶6.

18 On April 11, 2023, the Parties participated in an all-day mediation session presided over Hon.
19 Carl J. West (Ret.), a respected jurist and experienced mediator of wage and hour class actions.
20 Following the mediation, the Parties agreed on the basic terms of a settlement pursuant to a mediator's
21 proposal which was memorialized in the form of a Memorandum of Understanding. Decl. Nordrehaug
22 at ¶5. The Settlement is fair, reasonable and adequate, and should be preliminarily approved because
23 there is a substantial monetary payment, and there are significant litigation and class-certification risks.
24 Therefore, Plaintiffs respectfully request that this Court grant preliminary approval of the Agreement
25 and enter the proposed order submitted herewith.

26 **II. DESCRIPTION OF THE SETTLEMENT**

27 The Gross Settlement Amount is Three Million Dollars (\$3,000,000). (Agreement at ¶ 1.22.)
28 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

1 Representative Service Payments to the Plaintiffs; and (5) the PAGA Penalties payment. (Agreement
2 at ¶ 1.22.) The Gross Settlement Amount does not include Defendants' share of payroll taxes.
3 (Agreement at ¶ 3.1.) The Gross Settlement Amount shall be all-in with no reversion to Defendants.
4 (Agreement at ¶ 3.1.) Decl. Nordrehaug at ¶15.

5 Within fifteen (15) days of the Effective Date, Defendants shall deposit the Gross Settlement
6 Amount with the Administrator. (Agreement at ¶ 4.3.) The distribution of Individual Class Payments
7 to Participating Class Members along with the other Court-approved distributions shall be made by the
8 Administrator within fourteen (14) days after Defendants fund the Gross Settlement Amount.
9 (Agreement at ¶ 5.1.) Decl. Nordrehaug at ¶16.

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

21 Class Members may choose to opt-out of the Settlement by following the directions in the Class
22 Notice. (Agreement at ¶ 8.5, Ex. A.) All Class Members who do not "opt out" will be deemed
23 Participating Class Members who will be bound by the Settlement and will be entitled to receive an
24 Individual Class Payment. (Agreement at ¶ 8.5(c).) All Aggrieved Employees, including those who
25 submit an opt-out request, will still be paid their allocation of the PAGA Penalties and will remain
26 subject to the release of the Released PAGA Claims regardless of their request for exclusion.
27 (Agreement at ¶¶ 6.3 and 8.5(d).) Finally, the Class Notice will advise the Class Members of their right
28

1 to object to the Settlement and/or dispute their Workweeks. (Agreement at ¶¶ 8.6 and 8.7, Ex. A.)
2 Decl. Nordrehaug at ¶18.

3 A Participating Class Member must cash his or her Individual Class Payment check within 180
4 days after it is mailed. (Agreement at ¶ 5.2.) Any settlement checks not cashed within 180 days will
5 be voided and any funds represented by such checks sent to the California Controller's Unclaimed
6 Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the
7 requirements of C.C.P. § 384(b). (Agreement at ¶ 5.4.) Decl. Nordrehaug at ¶19.

8 Subject to Court approval, the Parties have agreed on ILYM Group to administer the settlement
9 in this action ("Administrator"). (Agreement at ¶ 1.2.) The Administrator will be paid for settlement
10 administration in an amount not to exceed \$25,000. (Agreement at ¶ 3.2(c).) ILYM provided an
11 estimate of \$21,950 for administration expenses. Decl. Nordrehaug at ¶20.

12 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
13 to exceed one-third of the Gross Settlement Amount, as the Class Counsel Fees Payment. (Agreement
14 at ¶ 3.2(b).) Class Counsel will also be allowed to apply separately for an award of Class Counsel
15 Litigation Expenses Payment in an amount not to exceed \$22,000. (Agreement at ¶ 3.2(b).) Subject
16 to Court approval, the Agreement provides for a payment of no more than \$10,000 each to the Plaintiffs
17 as the Class Representative Service Payments. (Agreement at ¶ 3.2(a).) Decl. Nordrehaug at ¶21.

18 Subject to Court approval, the PAGA Penalties will be paid from the Gross Settlement Amount
19 for PAGA penalties under the California Private Attorneys General Act, Cal. Labor Code Section 2698,
20 *et seq.* ("PAGA"). The PAGA Penalties are \$60,000. (Agreement at ¶¶ 1.34 and 3.2(d).) Pursuant to
21 the express requirements of Labor Code § 2699(i), the PAGA Payment shall be allocated as follows:
22 75% shall be allocated to the Labor Workforce Development Agency ("LWDA") as its share of the civil
23 penalties and 25% allocated to the Individual PAGA Payments to be distributed to the Aggrieved
24 Employees based on the number of their respective PAGA Pay Periods. (Agreement at ¶ 3.2(d).) As set
25 forth in the accompanying proof of service, the LWDA has been served with this motion and the
26 Agreement. Decl. Nordrehaug at ¶22.

1 **III. CASE BACKGROUND**

2 The description of the case and claims, along with the procedural history is set forth in the
3 Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and the
4 exchange of documents and information in connection with the Action over nearly two years which
5 permitted Class Counsel to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and 14.
6 The Parties participated in mediation on April 11, 2023 with Hon. Carl J. West (Ret.), which after arms'
7 length negotiations both during and after the mediation, resulted in this Settlement. Decl. Nordrehaug,
8 ¶12.

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

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

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

23 The primary question presented on an application for preliminary approval of a proposed class
24 action settlement is whether the proposed settlement is "within the range of possible approval." *Manual*
25 *for Complex Litigation, Second* §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir.
26 1982).² Preliminary approval is merely the prerequisite to giving notice so that "the proposed

27 ² California courts look to federal authority on class actions. *Vasquez v. Superior Court*, 4 Cal.3d
28 800, 821 (1971). "It is well established that in the absence of relevant state precedents trial courts are

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

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

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

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

26 _____
27 urged to follow the procedures prescribed in Rule 23 of the Federal Rules of Civil Procedure for
28 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).

523, 528 (C.D. Cal. 2004).

B. Factors To Be Considered In Granting Preliminary Approval

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

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

This settlement is the result of extensive and hard-fought litigation as well as negotiations before an experienced and well-respected mediator. Defendants have expressly denied and continue to deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiffs and Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released Class Claims of the Class in accordance with this Settlement.³

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

³ The release applicable to the Class is appropriately tethered to allegations in the Action as the "Released Class Claims" are defined as "all class claims pled or could have been pled based on the factual allegations contained in the Operative Complaint which occurred during the Class Period. Except as expressly set forth in this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period." (Agreement at ¶¶ 1.38 and 6.2.)

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 session with Hon. Carl J. West (Ret.), a respected
7 jurist and experienced mediator of wage and hour class actions, in order to reach this Settlement. In
8 preparation for the mediation, Defendants provided Class Counsel with payroll and employment data
9 and 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, Plaintiffs and Class Counsel believe that this
14 Settlement is fair, reasonable and adequate.

15 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant is
16 Three Million Dollars (\$3,000,000). The Settlement is all-in with no reversion to Defendant and no
17 need to submit a claim form. Decl. Nordrehaug at ¶ 3.

18 Class Counsel has conducted an investigation into the facts of the class action. Informal
19 discovery was obtained, which included the production of hundreds of pages of documents. Class
20 Counsel engaged in a thorough review and analysis of the relevant documents and data with the
21 assistance of an expert. Accordingly, the agreement to settle did not occur until Class Counsel
22 possessed sufficient information to make an informed judgment regarding the likelihood of success on
23 the merits and the results that could be obtained through further litigation. In addition, Class Counsel
24 previously negotiated settlements with other employers in actions involving nearly identical issues and
25 analogous defenses. Based on the foregoing data and their own independent investigation, evaluation
26 and experience, Class Counsel believes that the settlement with Defendants on the terms set forth in the
27 Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known
28

1 facts and circumstances, including the risk of significant delay, defenses asserted by Defendants, and
2 potential appellate issues. Decl. Nordrehaug at ¶ 14.

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

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

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

17 The proposed Settlement herein has no "obvious deficiencies" and is well within the range of
18 possible approval. All Class Members will receive an opportunity to participate in the Settlement and
19 receive payment according to the same formula. (Agreement at ¶ 3.2(e).) Based upon 1,681 Class
20 Members who collectively worked 161,730 Workweeks (Agreement at ¶ 4.1), the Gross Settlement
21 Amount provides an average value of \$1,784 per Class Member and \$18 per Workweek and after
22 deductions the Net Settlement Amount provides an average recovery of \$1,108.26 per Class Member
23 and a recovery of \$11.51 per Workweek. Decl. Nordrehaug, ¶6.

24 The calculations to compensate for the amount due for the Class at the time of the mediation
25 were calculated by Berger Consulting, Plaintiffs’ damage expert. As to the Class whose claims are at
26 issue in this Action, Plaintiffs used the expert to analyze the data and determine the potential unpaid
27 wages for the employees. The maximum potential damages were calculated to be \$2,298,202 for the
28 alleged unpaid wages due to the alternative work schedule, \$1,070,877 for the alleged unpaid wages

1 due to reporting time, \$7,016,029 for the alleged unpaid wages due to off-the-clock work at 1 hour per
2 week, \$77,817 for the alleged unpaid wages due to the regular rate miscalculation applicable to
3 overtime, meal premiums and sick pay, \$544,984 for alleged meal period damages based upon a 15.8%
4 potential violation rate for shifts worked and after deducting the meal premiums actually paid by
5 Defendant, \$3,035,361 for alleged rest period damages based upon the same potential 15.8% violation
6 rate observed for meal periods, \$184,402 for alleged unreimbursed business expenses for personal cell
7 phone usage at \$5 per month. Decl. Nordrehaug, ¶6. As a result, the total damage valuation was
8 calculated that Defendant was subject to a maximum damage claim in the amount of \$14,227,672. As
9 to potential penalties, Plaintiffs calculated that potential waiting time penalties were a maximum of
10 between \$1,100,557 and \$2,861,447 and potential maximum wage statement penalties were between
11 \$141,000 and \$2,416,000, both depending on the predicate violation giving rise to the penalty.⁴
12 Defendants vigorously disputed Plaintiffs' calculations and exposure theories. Decl. Nordrehaug, ¶6.

13 Consequently, the Gross Settlement Amount of \$3,000,000 represents more than 21% of the
14 maximum value of the alleged damages at issue in this case at the time this Settlement was negotiated.⁵
15 The above maximum calculations should then be adjusted in consideration for both the risk of class
16 certification and the risk of establishing class-wide liability on all claims. Given the amount of the
17 settlement as compared to the potential value of claims in this case and the defenses asserted by
18 Defendants, this settlement is fair and reasonable.⁶ Clearly, the goal of this litigation has been met.

20 ⁴ While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
21 226, at mediation Plaintiffs recognized that these claims were subject to additional, separate defenses
22 asserted by Defendants, including, a good faith dispute defense as to whether any premium wages for
23 meal or rest periods or other wages were owed given Defendants' position that Plaintiffs and Class
24 Members were properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584
25 (2010) ("There is no willful failure to pay wages if the employer and employee have a good faith dispute
26 as to whether and when the wages were due.").

25 ⁵ Because the PAGA claim is not a class claim and primarily is paid to the State of California,
26 Plaintiffs have not included the PAGA claim in this discussion of the value of the class claims. The
27 PAGA claim is addressed in the Decl. Nordrehaug at ¶33.

27 ⁶ 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

Decl. Nordrehaug, ¶6.

Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by Defendants present serious threats to the claims of the Plaintiffs and the other Class Members. Defendants asserted that Defendants' practices complied with all applicable Labor laws. Defendants argued that Class Members were paid for all time worked, that all work time was properly recorded, and that the alternative work schedule was lawful. Defendants contend that its meal and rest period policies fully complied with California law and Defendants did not fail to provide the opportunity for legally required meal and rest breaks. Defendants could argue that its payment of significant meal period premiums is evidence of lawful practices. Defendants contend that there was no failure to pay for business expenses and any cell phone usage was merely convenient and voluntary such that reimbursement was not legally required. Finally, Defendants could argue that the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), weakened Plaintiffs' claims, on liability, value, and class certifiability as to the meal and rest period claims. Defendants also argue that based on its facially lawful practices, Defendants acted in good faith and without willfulness, which if accepted would negate the claims for waiting time penalties and/or inaccurate wage statements. If successful, Defendants' defenses could eliminate or substantially reduce any recovery to the Class. While Plaintiffs believe that these defenses could be overcome, Defendants maintain these defenses have merit and therefore present a serious risk to recovery by the Class. Decl. Nordrehaug, ¶ 24.

There was also a significant risk that, if the Action was not settled, Plaintiffs would be unable to obtain a certified class and maintain the certified class through trial, and thereby not recover on behalf of any employees other than themselves. At the time of the mediation, Defendants forcefully opposed

(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 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 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 the propriety of class certification, arguing that individual issues precluded class certification. Further,
2 as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59
3 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class-wide recovery even where the
4 class has been certified. While other cases have approved class certification in wage and hour claims,
5 class certification in this action was hotly disputed and the maintenance of a certified class through trial
6 was by no means a foregone conclusion. Decl. Nordrehaug, ¶ 25.

7 After arm's length negotiations between experienced and informed counsel, the Parties
8 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of
9 \$3,000,000. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

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

16 2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
17 (9th Cir. 2000)).

18 **3. The Settlement Does Not Improperly Grant Preferential Treatment To** 19 **Class Representatives or Segments Of The Class**

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

25 Plaintiffs will apply to the Court for Class Representative Service Payments in consideration
26 for their service and for the risks undertaken on behalf of the Class. (Agreement at ¶ 3.2(a).) Plaintiffs
27 performed their duties admirably by working with Class Counsel over the course of litigation. The
28 Declarations of the Plaintiffs are submitted herewith in support. Decl. Nordrehaug at ¶27. At this stage,
the requested service award of \$10,000 is well within the accepted range of awards for purposes of
preliminary approval. See e.g. *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D.

1 Cal. 2018) (awarding \$12,500 where average class member payment was \$351); *Holman v. Experian*
2 *Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014) (approving \$10,000 service award
3 where class member recovery was \$375); *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008 WL
4 4473183, *7 (S.D. Cal. Oct. 06, 2008) (awarding \$25,000 service award to each of six plaintiffs in
5 overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D. Cal. Jan. 27 2007)
6 (awarding \$25,000 service award in overtime class action and a pool of \$100,000 in enhancements).
7 As explained in *Glass*, service awards are routinely awarded to class representatives to compensate the
8 employees for the time and effort expended on the case, for the risk of litigation, for the fear of suing
9 an employer and retaliation there from, and to serve as an incentive to vindicate the statutory rights of
10 all employees. 2007 WL 221862 at *16-17.

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

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

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

1 success on the merits and the results that could be obtained through further litigation. Decl. Nordrehaug
2 at ¶29.

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

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

8 All individuals who are or previously worked for Defendants in California who were
9 classified as non-exempt at any time during the Class Period, excluding non-exempt
hourly hospital workers employed by Heart Hospital of BK, LLC.

10 (Agreement at ¶ 1.5.)

11 The Class Period is October 1, 2017 to June 11, 2023. (Agreement at ¶ 1.13.)

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

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

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

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

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

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

26 Plaintiffs bring this action on behalf of a Class of non-exempt employees of Defendant during
27 the Class Period. Plaintiffs asserts that all of these individuals are ascertainable because the class
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1 members can readily be determined through examination of Defendants' files. Given that the Class
2 consists of 1,681 individuals, Plaintiffs maintain that numerosity is clearly satisfied. *See Bowles v.*
3 *Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose v. City of*
4 *Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.)
5 Here, Plaintiffs assert that the 1,681 current and former employees that comprise the Class can be
6 identified based on Defendants' records and are sufficiently numerous for class certification. Decl.
7 Nordrehaug at ¶30.

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

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

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

20 Here, Plaintiffs contend that common questions of law and fact are present, specifically the
21 common questions of whether Defendants' employment practices were lawful, whether Defendants
22 failed to provide meal and rest periods to Class Members, whether Class members were lawfully
23 compensated for all hours worked, Whether Defendants correctly calculated the regular rate, whether
24 Defendants' alternative workweek schedule was valid, whether Defendants failed to provide required
25 expense reimbursement, and whether Class Members are entitled to damages and penalties as a result
26 of these practices. Plaintiffs contend that certification of this Class is appropriate because Defendants
27 allegedly engaged in uniform practices with respect to the Class Members. As a result, these common
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1 questions of liability could be answered on a class wide basis. Decl. Nordrehaug, ¶30. Defendants
2 dispute that common questions predominate but will not oppose such a finding for purposes of this
3 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, like
12 every other member of the Class, were employed by Defendants as non-exempt employees, and, like
13 every other member of the Class, were subject to the same employment practices. Plaintiffs, like every
14 other member of the Class, also claim owed compensation as a result of the Defendants’ uniform
15 company policies and practices. Thus, the claims of Plaintiffs and the members of the Class arise from
16 the same course of conduct by Defendants, involve the same issues, and are based on the same legal
17 theories. Decl. Nordrehaug at ¶30. For purposes of settlement, Plaintiffs assert that the typicality
18 requirement is met as to the common issues presented in this case. Defendants do not oppose a finding
19 of typicality for purposes of this Settlement only.

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

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

1 the prosecution of the Action and the monetary settlement reached. Second, Plaintiffs retained
2 competent counsel who are experienced in employment class actions and who have no conflicts. Decl.
3 Nordrehaug at ¶ 31. Third, there is no antagonism between the interests of the Plaintiffs and those of
4 the Class. Both the Plaintiffs and the Class Members seek monetary relief under the same set of facts
5 and legal theories. Under such circumstances, there can be no conflicts of interest, and adequacy of
6 representation is satisfied. *Reaves v. Ketoro, Inc.*, 2020 U.S. Dist. Lexis 167926, *23 (C.D. Cal. 2020).
7 Defendants dispute that the adequacy requirement is satisfied but will not oppose such a finding for
8 purposes of this Settlement only.

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

10 To certify a class, the Court must also determine that a class action is superior to other available
11 methods for the fair and efficient adjudication of the controversy. “Where classwide litigation of
12 common issues will reduce litigation costs and promote greater efficiency, a class action may be
13 superior to other methods of litigation.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir.
14 1996). As courts have previously observed:

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

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

22 Here, Plaintiffs contend that a class action is the superior mechanism for resolution of the claims
23 as pled by the Plaintiffs. While Defendants dispute that class treatment is superior, Defendants do not
24 dispute a finding of superiority in this action for purposes of this Settlement only.

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

26 The Court has broad discretion in approving a practical notice program. The Parties have agreed
27 upon procedures by which the Class Members will be provided with written notice of the Settlement
28 similar to that approved and utilized in hundreds of class action settlements. In accordance with the
Agreement, Defendants will provide to the Administrator a confidential electronic spreadsheet
containing the Class Data. (Agreement at ¶ 4.2.) Within 14 days after receiving the Class Data, the

1 Administrator will mail the Class Notice to all Class Members via first-class U.S. Mail using the most
2 current mailing address information available. (Agreement at ¶ 8.4(b).) A Spanish translation of the
3 Class Notice Packet will be included in the mailing. (Agreement at ¶ 1.11.)

4 The Class Notice, drafted jointly and agreed upon by the Parties through their respective counsel
5 and to be approved by the Court, includes all relevant information. (*See Exhibit “A” to the Agreement.*)
6 The Class Notice will include, among other information: (i) information regarding the Action; (ii) the
7 impact on the rights of the Class Members if they do not opt out, including a description of the
8 applicable release; (iii) information to the Class Members regarding how to opt out and how to object
9 to the Settlement; (iv) the estimated Individual Class Payment for each of the Class Members; (iii) the
10 amount of attorneys’ fees and expenses to be sought; (v) the amount of the Plaintiffs’ service award
11 request; and (vi) the anticipated expenses of the Administrator. Decl. Nordrehaug at ¶32.

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

22 23 **VII. CONCLUSION**

24 Plaintiffs respectfully request that the Court preliminarily approve the proposed settlement and
25 sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the final
26 approval hearing for the proposed date of August 15, 2024, which date is at least one hundred twenty
27 (120) days from the date of Preliminary Approval.
28

1 Dated: January 16, 2024

**BLUMENTHAL NORDREHAUG BHOWMIK
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3 Kyle R. Nordrehaug, Esq.
4 Attorney for Plaintiffs
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