

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

Norman B. Blumenthal (State Bar #068687)
Kyle R. Nordrehaug (State Bar #205975)
Aparajit Bhowmik (State Bar #248066)
2255 Calle Clara
La Jolla, CA 92037
Telephone: (858)551-1223
Facsimile: (858) 551-1232
Email: norm@bamlawca.com
Website: www.bamlawca.com

LABOR LAW PC

Danny Yadidsion (State Bar No. 260282)
Noël Harlow (State Bar No. 256124)
100 Wilshire Blvd., Suite 700
Santa Monica, CA 90401
Tel.: (310) 494-6082

Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA**

RUSTIN FOX, GABRIELE SANTI, and
PATRICK BURK, individuals, on behalf of
themselves and on behalf of all persons
similarly situated,

Plaintiff,

vs.

CRISIS24, INC., a Corporation; CRISIS24
PROTECTIVE SOLUTIONS, LP, a
Limited Partnership; and DOES 1 through
50, inclusive,

Defendants.

Case No. 23CV418864

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

Hearing Date: October 23, 2024
Hearing Time: 1:30 p.m.

Judge: Hon. Theodore C. Zayner
Dept.: 19

Action Filed: July 7, 2023
Trial Date: Not set

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(the “LWDA”) and the Aggrieved Employees. The Gross Settlement Amount does not include the employer’s share of payroll taxes, which will be separately paid by Defendants. The Settlement is all-in with no reversion to Defendants and no need for Class Members to submit claim forms. Decl. Nordrehaug at ¶3. The following is a table of the key financial terms of the Settlement and the proposed deductions:

\$1,250,000 (Gross Settlement Amount)

- \$30,000 (Plaintiffs’ proposed service awards not to exceed \$10,000 each)
- \$30,000 (Class Counsel Litigation Expenses - not to exceed amount)
- \$416,666 (Class Counsel Fees Payment - not to exceed one-third of settlement)
- \$50,000 (PAGA Penalties - 75% to LWDA / 25% to Aggrieved Employees)
- \$14,000 (Administration Expenses Payment - not to exceed amount)

\$709,334 (Net Settlement Amount)

Based upon 624 Class Members who collectively worked 40,000 Workweeks (Agreement at ¶ 4.1), the Gross Settlement Amount provides a value of \$2,003 per Class Member and \$31 per Workweek, and the Net Settlement Amount provides an average recovery of \$1,136.75 per Class Member and \$17.73 per Workweek. Decl. Nordrehaug at ¶6.

On March 26, 2024, the Parties participated in an all-day mediation session presided over by Tripper Ortman, Esq., a respected and experienced mediator of wage and hour class actions. Following this mediation, the Parties reached an agreement to settle the Action. 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 substantial litigation and class-certification risks. Therefore, Plaintiffs respectfully request 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 One Million Two Hundred Fifty Thousand Dollars (\$1,250,000). (Agreement at ¶ 1.22.) Under the Settlement, the Gross Settlement Amount consists of the following elements: (i) all Individual Class Payments and Individual PAGA Payments; (ii) the LWDA PAGA Payment; (iii) the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment; (iv) the Class Representative Service Payments; and (v) the Administration Expenses Payment. (Agreement at ¶ 1.22.) The Gross Settlement Amount does not include Defendants’ share of payroll taxes. (Agreement at ¶ 3.1.) The Gross Settlement Amount shall be all-in with no reversion to

1 Defendants. (Agreement at ¶ 3.1.) Decl. Nordrehaug at ¶15.

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

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

19 Class Members may choose to opt out of the Settlement by following the directions in the Class
20 Notice. (Agreement at ¶ 8.5, Ex. A.) All Class Members who do not "opt out" will be deemed
21 Participating Class Members and will be bound by the Settlement and will be entitled to receive an
22 Individual Class Payment. (Agreement at ¶ 8.5(c).) Because the PAGA statute does not have an
23 opt-out mechanism, all Aggrieved Employees, including any who submit an opt-out request, will receive
24 an Individual PAGA Payment and will release the Released PAGA Claims. (Agreement at ¶¶ 6.3 and
25 8.5(d)) Finally, the Class Notice will advise the Class Members who do not opt out of their right to
26 object to the Settlement and/or dispute their Workweeks. (Agreement at ¶¶ 8.6 and 8.7, Ex. A.) Decl.
27 Nordrehaug at ¶18.

28 Participating Class Members must cash the check for their Individual Class Payment (and, if

1 applicable, Individual PAGA Payment) within 180 days after checks are mailed. (Agreement at ¶ 5.2.)
2 Any settlement checks not cashed within 180 days will be voided and any funds represented by such
3 checks will be allocated to a Court-approved nonprofit organization or foundation consistent with Code
4 of Civil Procedure Section 384(b) ("Cy Pres Recipient"). The Parties agree to propose Children's
5 Advocacy Institute and Legal Aid at Work as the Cy Pres Recipients of this Settlement to each receive
6 50% of the uncashed funds. (Agreement at ¶ 5.4.) Decl. Nordrehaug at ¶19.

7 Subject to Court approval, the Parties have agreed on Apex Class Action to administer the
8 settlement in this action (the "Administrator"). (Agreement at ¶ 1.2.) The Administrator will be paid
9 for settlement administration in an amount not to exceed \$14,000. (Agreement at ¶ 3.2(c).) Decl.
10 Nordrehaug at ¶20. A Declaration from Apex Class Action setting forth its qualifications, experience
11 and its estimate for administration is submitted herewith.

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 for an award of Class Counsel Litigation
15 Expenses Payment in an amount not to exceed \$30,000. (Agreement at ¶ 3.2(b).) Subject to Court
16 approval, the Agreement provides for a payment of no more than \$10,000 each to Plaintiffs as the Class
17 Representative Service Payments. (Agreement at ¶ 3.2(a).) Decl. Nordrehaug at ¶21.

18 Subject to Court approval, Fifty Thousand Dollars (\$50,000) will be paid from the Gross
19 Settlement Amount in settlement of Plaintiffs' claim for civil penalties under the California Labor Code
20 Private Attorneys General Act ("PAGA"), Cal. Labor Code Section 2698, *et seq.* Pursuant to the
21 operative version of Labor Code § 2699(i), the PAGA Penalties payment shall be allocated as follows:
22 75% (\$37,500) shall be allocated to the LWDA as its share of the civil penalties and 25% (\$12,500)
23 allocated to the Aggrieved Employees and distributed as Individual PAGA Payments based on the
24 number of their respective PAGA Pay Periods.² (Agreement at ¶ 3.2(d).) As set forth in the
25 accompanying proof of service, the LWDA has been served with this motion and the Agreement. Decl.

26 _____
27 ² Labor Code §2699 was recently amended, but the amendments "apply to a civil action brought on
28 or after June 19, 2024", and so the 75/25 allocation reflects the pre-amendment requirements applicable
to this action filed before June 19, 2024.

1 Nordrehaug at ¶22.

2 **III. CASE BACKGROUND**

3 The description of the case and claims, along with the procedural history, is set forth in the
4 Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and an
5 informal exchange of documents, information, and data in connection with the mediation which
6 permitted Class Counsel to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and 14.
7 The Parties participated in private mediation on March 26, 2024 with Tripper Ortman, Esq., which after
8 arm's length negotiations, resulted in this Settlement. Decl. Nordrehaug, ¶12.

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

11 When a proposed class-wide settlement is reached, the settlement must be submitted to the court
12 for approval. 2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) at §11.41, p.11-87.
13 California "[p]ublic policy generally favors the compromise of complex class action litigation."
14 *Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 581 (2010) quoting *Cellphone Termination Fee*
15 *Cases*, 180 Cal.App.4th 1110, 1117-18 (2009). Class action settlements are approved where the
16 proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
17 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982), *cert.*
18 *denied*, 459 U.S. 1217 (1983)).

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

25 The primary question presented on an application for preliminary approval of a proposed class
26 action settlement is whether the proposed settlement is "within the range of possible approval." *Manual*
27 *for Complex Litigation, Second* §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir.
28

1 1982).³ Preliminary approval is the prerequisite to giving notice so that “the proposed settlement... may
2 be submitted to members of the prospective Class for their acceptance or rejection.” *Sayaman v. Baxter*
3 *Healthcare Corp.*, 2010 U.S. Dist. LEXIS 151997, *3 (C.D. Cal. 2010); *see also Cho v. Seagate Tech.*
4 *Holdings, Inc.*, 177 Cal. App. 4th 734, 742-45 (2009) (upholding trial court's determination that
5 settlement was "fair, reasonable and adequate" where the settlement "provided valuable benefits to the
6 class ... that were 'particularly valuable in light of the risks plaintiff would have faced if she proceeded
7 to litigate her case.'"); *Newberg*, 3d Ed., §11.41, p.11-88. However, the ultimate question of whether
8 the proposed settlement is fair, reasonable and adequate is made after notice of the settlement is given
9 to the class members and a final settlement hearing is held by the Court.

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

11 The approval of a proposed settlement of a class action suit is a matter within the broad
12 discretion of the trial court. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 234-235 (2001);
13 *Dunk*, 48 Cal.App.4th at 1794. Preliminary approval does not require the trial court to answer the
14 ultimate question of whether a proposed settlement is fair, reasonable and adequate. That final
15 determination is made only after notice of the settlement has been given to the class members and after
16 they have been given an opportunity to voice their views of the settlement or to be excluded from the
17 settlement. 3B J. Moore, *Moore's Federal Practice* §§23.80 - 23.85 (2003). The Ninth Circuit explains,
18 “the very essence of a settlement is compromise, ‘a yielding of absolutes and an abandoning of highest
19 hopes.’” *Officers for Justice*, 688 F.2d at 624. The question whether a proposed settlement is fair,
20 reasonable and adequate necessarily requires a judgment and evaluation by the attorneys for the parties
21 based upon a comparison of “the terms of the compromise with the likely rewards of litigation.”
22 *Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir. 1982), *cert. denied* 464 U.S. 818 (1983) (quoting
23 *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-
24 25 (1968)). Thus, when analyzing the settlement, the amount is “not to be judged against a hypothetical

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26 ³ California courts look to federal authority on class actions. *Vasquez v. Superior Court*, 4 Cal.3d
27 800, 821 (1971). “It is well established that in the absence of relevant state precedents trial courts are
28 urged to follow the procedures prescribed in Rule 23 of the Federal Rules of Civil Procedure for
conducting class actions.” *Frazier v. City of Richmond*, 184 Cal. App.3d 1491, 1499 (1986), *citing*
Green v. Obledo, 29 Cal.3d 126, 145-146 (1981).

1 or speculative measure of what might have been achieved by the negotiators.” *Officers for Justice*, 688
2 F.2d at 625, 628.

3 With regard to class action settlements, the opinions of counsel should be given considerable
4 weight in light of their familiarity with the litigation and previous experience with similar cases. *Officers*
5 *for Justice*, 688 F.2d at 625; *In re Wash. Public Power Supply System Sec. Litig.*, 720 F. Supp. 1379,
6 1392 (D. Ariz. 1989); *Kirkorian v. Borelli*, 695 F. Supp. 446, 451 (N.D. Cal. 1988); *Weinberger*, 698
7 F.2d at 74. As a result, courts hold that the recommendation of counsel is entitled to significant weight.
8 *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004).

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

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

21 **1. The Settlement Is The Product Of Serious, Informed And**
22 **Arm’s Length Negotiations By Experienced Counsel.**

23 The Settlement is the result of extensive and hard-fought litigation as well as negotiations before
24 an experienced and well-respected mediator. Defendants have expressly denied and continue to deny
25 any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiffs and Class
26 Counsel have determined that it is desirable and beneficial to the Class to resolve the Released Class
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1 Claims in accordance with the Settlement.⁴

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

11 The Parties attended an arms-length mediation session with Tripper Ortman, a respected and
12 experienced mediator of wage and hour class actions, to reach the Settlement. In preparation for the
13 mediation, Defendants provided Class Counsel with necessary information, including the Class payroll
14 and timekeeping data. Plaintiffs analyzed the data with the assistance of a damages expert, Berger

15
16 ⁴ The release applicable to the Class is tethered to allegations in the Action as the "Released Class
17 Claims" are "all claims that were alleged, or reasonably could have been alleged based on the facts stated
18 in the Operative Complaint, which occurred during the Class Period. Except as expressly set forth in this
19 Agreement, Participating Class Members do not release any other claims, including claims for vested
20 benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment
21 insurance, disability, social security, workers' compensation, or claims based on facts occurring outside
22 the Class Period. The Released Class Claims shall specifically include all claims for the following alleged
23 California Labor Code violations, including claims under Labor Code sections 201 to 204, 210, 218,
24 221, 223, 226, 226.2, 226.7, 227.3, 233, 246, 246.5, 510, 512, 1174, 1194, 1194.2, 1197, 1197.1, and
25 2802 and the following claims: (i) failure to provide meal periods, including claims under Labor Code
26 section 226.7; (ii) failure to provide rest periods, including claims under Labor Code section 226.7; (iii)
27 any associated failure to pay regular wages, minimum wages, overtime wages, or premiums for meal
28 periods or rest breaks; (iv) failure to pay any and all regular or premium wages, as defined in California
Labor code section 200, including claims for regular, vacation or premium wages and any claims relating
to calculation of overtime due for employees with multiple regular rates during a particular pay period;
(v) failure to pay minimum wages; (vi) failure to pay all wages due to discharged or quitting employees,
including vacation or PTO claimed to have accrued or otherwise be due; (vii) failure to furnish accurate
itemized wage statements; (viii) failure to pay timely pay wages during employment; (ix) failure to
reimburse for necessary expenses, including without limitation expenses relating to personal phones and
uniforms; (x) failure to pay any wages or premiums at the correct regular rate of pay, including as a
result of incentive compensation or bonuses (xii) failure to pay sick wages at the correct regular rate of
pay." (Agreement at ¶¶ 1.38 and 6.2.)

1 Consulting, and prepared and submitted a mediation brief and damage valuation to the Mediator.
2 Following the all-day mediation, the Parties agreed to the Settlement, which was memorialized in the
3 form of a Memorandum of Understanding. The final terms of the Settlement were negotiated and set
4 forth in the Agreement now presented for this Court's approval. Decl. Nordrehaug at ¶ 5. Importantly,
5 Plaintiffs and Class Counsel believe that this Settlement is fair, reasonable and adequate.

6 Class Counsel has conducted a thorough investigation into the facts of the class action. Over
7 the course of more than a year, Class Counsel diligently evaluated the Class Members' claims against
8 Defendants. Prior to the settlement negotiations, counsel for Defendants provided Class Counsel with
9 access to necessary documents and information for the Class. In addition, Class Counsel has previously
10 negotiated settlements with other employers in actions involving nearly identical issues and analogous
11 defenses. Based on the informal discovery and their own independent investigation, evaluation and
12 experience, Class Counsel believes that the settlement with Defendants on the terms set forth in the
13 Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known
14 facts and circumstances, including the risk of significant delay, the risk that the claims would not be
15 allowed to proceed on a class or representative basis, the defenses asserted by Defendants, and potential
16 appellate issues. Decl. Nordrehaug at ¶ 14.

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

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

1
2 **2. The Settlement Has No "Obvious Deficiencies" And Falls Well Within**
3 **The Range For Approval.**

4 The proposed Settlement has no "obvious deficiencies" and is well within the range of possible
5 approval. All Class Members will receive an opportunity to participate in the Settlement and receive
6 payment according to the same formula. (Agreement at ¶ 3.2(e).) Based upon 624 Class Members who
7 collectively worked 40,000 Workweeks (Agreement at ¶ 4.1), the Gross Settlement Amount provides
8 a value of \$2,003 per Class Member and \$31 per Workweek, and the Net Settlement Amount provides
9 an average recovery of \$1,136.75 per Class Member and \$17.73 per Workweek. Decl. Nordrehaug, ¶6.

10 The calculations to compensate for the amount due to the Class Members at the time the
11 Settlement was negotiated were calculated by Plaintiffs' expert, Berger Consulting, in advance of
12 mediation. Class Counsel analyzed the data for putative class members and determined the potential
13 maximum damages for the class claims. For the Class, the maximum potential damages for alleged off-
14 the-clock work at one hour per week was \$2,247,298, the maximum potential damages for alleged meal
15 period violations were estimated to be \$4,923,854 based upon a 95% violation rate observed in the time
16 records, the maximum potential damages for alleged rest period violations were estimated to be
17 \$5,195,758 based upon a 100% violation rate for shifts worked by the Class, and the maximum potential
18 damages for the alleged failure to reimburse business expenses were calculated to be \$54,985 based upon
19 \$5 per month. In total, the damages for the Class were calculated to have a maximum potential total
20 value of \$12,421,895. In addition, Plaintiff calculated that the maximum value of the potential waiting
21 time penalties were \$3,305,601 if applied to all 284 terminated employees, and the maximum value of
22 the potential wage statement penalties were between \$464,500 and \$2,090,900, depending on the
23 predicate violation.⁵ Decl. Nordrehaug, ¶6.

24
25 ⁵ While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
26 226, at mediation Plaintiffs recognized that these claims were subject to additional, separate defenses
27 asserted by Defendants, including but not limited to, a good-faith dispute defense as to whether any
28 premium wages for meal or rest periods or other wages were owed given Defendants' position that
Plaintiffs and Class Members were properly compensated. *See Nordstrom Commission Cases*, 186 Cal.
App. 4th 576, 584 (2010) ("There is no willful failure to pay wages if the employer and employee have
a good faith dispute as to whether and when the wages were due.").

1 Consequently, the Gross Settlement Amount represents more than 10% of Plaintiffs' calculation
2 of the potential maximum damages at issue for the Class in this case, assuming these amounts could all
3 be proven in full at trial.⁶ Importantly, the recent decision that good faith belief of compliance by the
4 employer in *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065 (2024), could completely
5 negate the claims for waiting time and wage statement penalties, even if wages were owed to the class.
6 The maximum calculations should then be realistically risk rated in consideration for both the risk of class
7 certification and the risk of establishing class-wide liability on all claims. Given the amount of the
8 Settlement as compared to the potential value of the claims, the Settlement is most certainly fair and
9 reasonable.⁷ Clearly, the goal of this litigation has been met. Decl. Nordrehaug, ¶6.

10 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
11 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
12 Defendants present serious threats to the claims of the Plaintiffs and the other Class Members.
13 Defendants maintain that their practices complied with all applicable wage and hour laws. Defendants
14 maintain that all Class Members' work time was properly recorded and compensated. Defendants
15 contend that their meal and rest period policies and practices provide Class Members with meal and rest
16 periods. As to expense reimbursement, Defendants maintain that they did not fail to provide
17 reimbursement for necessary business expenses because, among other things, the alleged expenses were
18 convenient and voluntary, and therefore not were required expenses giving rise to reimbursement.
19 Defendants could argue that the decisions in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012),
20 *Lockheed Martin Corp. v. Superior Ct.*, 29 Cal. 4th 1096, 1108 (2003), and *Salazar v. See's Candy*

21
22 ⁶ Because the PAGA claim does not provide a recovery to the Class, Plaintiff did not include the
23 PAGA claim in this discussion of the class claim valuation. The PAGA claim is addressed in the Decl.
Nordrehaug at ¶ 33.

24 ⁷ See *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)
25 approving settlement which represented "roughly one-sixth of the potential recovery"); *Stovall-Gusman*
26 *v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval
27 where "the proposed Total Settlement Amount represents approximately 10% of what class might have
28 been awarded had they succeeded at trial."); *Viceral v. Mistras Grp., Inc.*, 2016 WL 5907869 (N.D. Cal.
2016) (approving wage and hour class action settlement amounting to 8.1% of full verdict value); *Ma*
v. Covidien Holding, Inc., 2014 WL 2472316, (C.D. Cal. 2014) (approving wage and hour class action
settlement worth "somewhere between 9% and 18%" of full verdict value).

1 *Shops Inc.*, 64 Cal.App.5th 85 (2021), weakened Plaintiffs' claims in terms of liability and value, and
2 preclude claims from proceeding on a class or representative basis. Defendants also maintain that a good
3 faith dispute and absence of willfulness would negate the claims for waiting time penalties and/or failure
4 to provide accurate itemized wage statements. See e.g. *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal.
5 5th 1056, 1065 (2024) ("if an employer reasonably and in good faith believed it was providing a
6 complete and accurate wage statement in compliance with the requirements of section 226, then it has
7 not knowingly and intentionally failed to comply with the wage statement law.") If successful,
8 Defendants' defenses could eliminate or substantially reduce any recovery to the Class. While Plaintiffs
9 believe that these defenses could be overcome, Defendants maintain these defenses have merit and
10 therefore present a serious risk to recovery by the Class. Decl. Nordrehaug, ¶ 24.

11 There was also a significant risk that, if the Action was not settled, Plaintiffs would be unable to
12 obtain class certification and thereby not recover on behalf of any employees other than themselves.
13 Defendants argued that the individual experience of each putative class member varied with respect to
14 the claims, which would preclude the claims from proceeding on a class basis. For instance, Plaintiffs'
15 meal and rest period claims would require individualized inquiries into whether each employee took a
16 compliant meal or rest period on a given shift and, if not, why. Plaintiffs are aware of other cases where
17 class certification of similar claims was denied. See e.g. *Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th 885
18 (2019) (denying certification of rest break claims). Defendants also argued that the existence of
19 arbitration agreements, which were signed by a substantial number of Class Members, would bar and/or
20 limit class certification. Finally, even if class certification was successful, as demonstrated by the
21 California Supreme Court decision in *Duran v. U.S. Bank National Association*, 59 Cal. 4th 1 (2014),
22 there are significant hurdles to overcome for a class-wide recovery even where a class has been certified.
23 While other cases have approved class certification of wage and hour claims, class certification in this
24 Action would have been hotly disputed and was by no means a foregone conclusion. Decl. Nordrehaug,
25 ¶ 25.

26 After arm's-length negotiations between experienced and informed counsel, the Parties
27 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of
28 \$1,250,000.00. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

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

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

7 **3. The Settlement Does Not Improperly Grant Preferential Treatment To
8 Class Representatives Or Segments Of The Class.**

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

13 Plaintiffs will apply to the Court for Class Representative Service Payments in consideration for
14 their service and for the risks undertaken on behalf of the Class. (Agreement at ¶ 3.2(a).) Plaintiffs
15 performed their duties admirably by working with Class Counsel. Decl. Nordrehaug at ¶27. The
16 concurrently filed declarations of the Plaintiffs are presented herewith in support of the request. For
17 purposes of this preliminary approval stage, the not to exceed amount is well within the accepted range
18 of awards for purposes of preliminary approval, subject to the Court's final determination of the amount
19 at final approval. *See, e.g., Andrews v. Plains All Am. Pipeline L.P.*, 2022 U.S. Dist. LEXIS 172183,
20 at *11 (C.D. Cal. 2022) (finding that the requested service awards of \$15,000 each are appropriate);
21 *Reynolds v. Direct Flow Med., Inc.*, 2019 U.S. Dist. LEXIS 149865, at *19 (N.D. Cal. 2019) (granting
22 request for \$12,500 service award); *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386
23 (E.D. Cal. 2018) (awarding \$12,500 where average class member payment was \$351); *Louie v. Kaiser*
24 *Foundation Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D. Cal. Oct. 06, 2008) (awarding \$25,000
25 service award to each of six plaintiffs in overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL
26 221862, *16-17 (N.D. Cal. 2007) (awarding \$25,000 service award in overtime class action and a pool
27 of \$100,000 in enhancements). As explained in *Glass*, service awards are routinely awarded to class
28 representatives to compensate them for the time and effort expended on the case, for the risk of

1 litigation, for the fear of suing an employer and retaliation therefrom, and to serve as an incentive to
2 vindicate the statutory rights of all employees. 2007 WL 221862 at *16-17.

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

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

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

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

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

2 Plaintiffs contend that the Settlement meets all of the requirements for certification of a
3 settlement class under California Code of Civil Procedure § 382 as demonstrated below, and therefore,
4 the 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 (a) employed by Defendants in the State of
7 California at any time during the Class Period, and (b) classified as non-exempt (i.e.,
hourly) employees.

8 (Agreement at ¶ 1.5.)

9 The “Class Period” is from July 1, 2021 to June 26, 2024. (Agreement at ¶ 1.13.)

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

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

13 Code of Civil Procedure Section 382 authorizes class actions “when the question is one
14 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 certification
15 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
16 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
17 representatives who can adequately represent the class.

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

19 Plaintiffs contend that the proposed Class satisfies the criteria for certification under Code of
20 Civil Procedure section 382. Defendants dispute that Plaintiffs can satisfy any of these requirements for
21 class certification in the litigation context, but do not oppose certification for purposes of the Settlement.
22 Accordingly, the proposed Class should be certified for purposes of the Settlement only. (Agreement
at ¶ 2.10.)

23 **1. Ascertainability And Numerosity.**

24 Plaintiffs bring this Action on behalf of a Class of non-exempt employees who worked for
25 Defendants during the applicable Class Period. Plaintiffs assert that all of these individuals are
26 ascertainable because the class members can readily be determined through examination of Defendants’
27 files. Given that the Class consists of approximately 624 members, Plaintiffs maintain that numerosity
28

1 is clearly satisfied. *See Bowles v. Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members
2 sufficiently numerous); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of 48 members
3 satisfies numerosity requirement.) Here, Plaintiffs assert that the 624 individuals who comprise the Class
4 can be identified based on Defendants' records and are sufficiently numerous for class certification.
5 Decl. Nordrehaug at ¶30.

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

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 on*
9 *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 fact
11 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, Plaintiffs contend that common questions of law and fact are present, and specifically the
19 common questions of whether Defendants' practices were lawful, whether Class members were lawfully
20 compensated for all hours worked, whether the Defendants failed to provide all legally required meal and
21 rest periods to Class Members, whether Defendants failed to provide required expense reimbursement,
22 and whether Class Members are entitled to damages and penalties as a result of these alleged practices.
23 Decl. Nordrehaug, ¶30.

24 **3. Typicality.**

25 The typicality requirement requires the Plaintiffs to demonstrate that the members of the class
26 have the same or similar claims as the plaintiff. "The typicality requirement is met when the claims of
27 the [p]laintiff arise from the same event or are based on the same legal theories." *Tate v. Weyerhaeuser*
28 *Co.*, 723 F.2d 598, 608 (8th Cir. 1983). In *Hanlon, supra*, 150 F.3d at 1020, the Ninth Circuit held that

1 “[u]nder the rule's permissive standards, representative claims are ‘typical’ if they are reasonably
2 coextensive with those of absent class members; they need not be substantially identical.”

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

11 **4. Adequacy of Class Representation.**

12 Plaintiffs contend that the Class Members are adequately represented here because Plaintiffs and
13 Class Counsel (a) do not have any conflicts of interest with other Class members, and (b) will prosecute
14 the case vigorously on behalf of the Class. *Hanlon*, 150 F.3d at 1020. First, Plaintiffs are well aware
15 of their duties as the representatives of the Class and have actively participated in the prosecution of this
16 case to date. Plaintiffs effectively communicated with counsel, provided documents to counsel, and
17 participated in the investigation and negotiations in the Action. Second, Plaintiffs retained competent
18 counsel who are experienced in employment class actions and who have no conflicts. Decl. Nordrehaug
19 at ¶ 31; Declaration of Danny Yadidsion at ¶¶ 4-6. Third, there is no antagonism between the interests
20 of the Plaintiffs and those of the Class. Both Plaintiffs and the Class Members seek monetary relief under
21 the same set of facts and legal theories.

22 **5. Superiority.**

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

28 Absent class treatment, each individual plaintiff would present in separate, duplicative

1 proceedings the same or essentially the same arguments and evidence, including expert
2 testimony. The result would be a multiplicity of trials conducted at enormous expense
3 to both the judicial system and the litigants. “It would be neither efficient nor fair to
4 anyone, including defendants, to force multiple trials to hear the same evidence and
5 decide the same issues.”

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

7 Here, Plaintiffs contend that a class action is the superior mechanism for resolution of the claims
8 as pled by the Plaintiffs.

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

10 The Court has broad discretion in approving a practical notice program. *7- Eleven Owners for*
11 *Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1164 (2000). The Parties have agreed
12 upon procedures by which the Class Members will be provided with written notice of the Settlement
13 similar to those approved and utilized in hundreds of class action settlements. In accordance with the
14 Agreement, Defendant will provide to the Administrator a confidential electronic spreadsheet containing
15 the Class Data. (Agreement at ¶ 4.2.) Within 14 days after receiving the Class Data, the Administrator
16 will mail the Class Notice to all Class Members via first-class U.S. Mail using the most current mailing
17 address information available. (Agreement at ¶ 8.4(b).) The Class Notice Packet will include a Spanish
18 translation. (Agreement at ¶ 1.11.)

19 The Class Notice, drafted jointly and agreed upon by the Parties through their respective counsel
20 and to be approved by the Court, includes all relevant information. (*See Exhibit “A” to the Agreement.*)
21 The Class Notice will include, among other information: (i) information regarding the Action; (ii) the
22 impact on the rights of the Class Members if they do not opt out, including a description of the
23 applicable release; (iii) information to the Class Members regarding how to opt out and how to object
24 to the Settlement; (iv) the Class Member’s individual workweeks and estimated Individual Class Payment
25 (and, if applicable, Individual PAGA Payment) and how to dispute the number of workweeks; (iii) the
26 amount of attorneys’ fees and expenses to be sought; (v) the amount of the Plaintiffs’ service award
27 request; and (vi) the anticipated expenses of the Administrator. The Class Notice will also contains a
28 link to a website maintained by the Administrator with pertinent information and documents related to
this matter. Decl. Nordrehaug at ¶32.

The Class Notice will state that the Class Members shall have sixty (60) days from the date that

1 the Notice is mailed to them (the “Response Deadline”) to request exclusion (opt-out), and that the
2 Response Deadline shall be extended 14 days in the event of a re-mailing. (Agreement at ¶¶ 1.42,
3 8.5(a).) Class Members shall be given the opportunity to object to the Settlement and/or requests for
4 attorneys’ fees and expenses and to appear at the Final Approval Hearing. (Agreement at ¶ 8.7.) The
5 Class Notice also provides contact information for Class Counsel to answer questions about appearing
6 at the Final Approval Hearing, and it provides links to the Court's website with instructions for accessing
7 the hearing. Class Members who do not submit a timely and proper request to opt out will automatically
8 receive a payment of their Individual Class Payment (and, if applicable, their Individual PAGA Payment).
9 This notice program was designed to meaningfully reach the Class Members and it advises them of all
10 pertinent information concerning the Settlement. Decl. Nordrehaug at ¶32. The mailing and distribution
11 of the Class Notice satisfies the requirements of due process, is the best notice practicable under the
12 circumstances, and complies with Rules of Court 3.766 and 3.769(f).

13 **VII. CONCLUSION**

14 Based on the foregoing, Plaintiff respectfully requests that the Court preliminarily approve the
15 proposed settlement and sign the proposed Preliminary Approval Order, which is submitted herewith,
16 and schedule the final approval hearing for March 19, 2025.

17 Dated: September 26, 2024 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**
18 By: /s/ Kyle Nordrehaug
19 Kyle R. Nordrehaug, Esq.
20 Attorney for Plaintiffs
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