

**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

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO**

NICHOLAS KALUZA, an individual, on
behalf of himself and on behalf of all persons
similarly situated, and on behalf of the State
of California, as a private attorney general,

Plaintiffs,

vs.

BOEING AEROSPACE OPERATIONS,
INC., a Delaware Corporation; and DOES
1-50, Inclusive,

Defendants.

CASE NO.: **37-2022-00004602-CU-OE-CTL**
[Consolidated with Case No.
37-2022-00004879-CU-OE-CTL]

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

Hearing Date: March 4, 2024
Hearing Time: 8:30 a.m.

Judge: Hon. Eddie C. Sturgeon
Dept.: 67

Action Filed: February 4, 2022
Trial Date: Not set

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1 **I. INTRODUCTION**

2 Plaintiff Nicholas Kaluza (“Plaintiff”) respectfully submits this memorandum in support of the
3 unopposed motion for preliminary approval of the proposed class action settlement with Defendant
4 Boeing Aerospace Operations, Inc. (“Defendant”), and seek entry of an order: (1) preliminarily
5 approving the proposed settlement of this class action with Defendant; (2) for settlement purposes only,
6 conditionally certifying the Class, which is comprised of “all individuals who are, or previously were,
7 employed by Defendant Boeing Aerospace Operations, Inc. in California and classified as a non-exempt
8 employee at any time during the Class Period”, which is February 4, 2018 through August 1, 2023; (3)
9 provisionally appointing Plaintiff as the representative of the Class; (4) provisionally appointing
10 Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit Bhowmik of Blumenthal Nordrehaug
11 Bhowmik De Blouw LLP, Jean-Claude Lapuyade of JCL Law Firm, APC, and Shani O. Zakay of
12 Zakay Law Group, APLC 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 Simpluris as Administrator, and (8) scheduling a final approval hearing date, proposed for July 26, 2024
15 which is at least 120 days from preliminary approval, to consider Plaintiff’s motion for final approval
16 of the settlement and for approval of attorneys’ fees and expenses. Plaintiff and Defendant (collectively
17 the “Parties”) have reached a full and final settlement of the above-captioned action, which is embodied
18 in the Class Action and PAGA Settlement Agreement (“Agreement”) filed concurrently with the Court.¹
19 A copy of the fully executed Agreement is attached as Exhibit #1 to the Declaration of Kyle
20 Nordrehaug (“Decl. Nordrehaug”), served and filed herewith. The form of the Agreement is based
21 upon the Los Angeles County Superior Court model form for a class and PAGA settlement.

22 As consideration for this Settlement, the non-reversionary Gross Settlement Amount of Five
23 Hundred Thousand Dollars (\$500,000) (the “Gross Settlement Amount”) is to be paid by Defendants,
24 as set forth in the Agreement. The Gross Settlement Amount will settle all issues pending in the Action
25 between the Parties and will be made in full and final settlement of the Released Class Claims in
26 exchange for the payments to Participating Class Members from the Net Settlement Amount, and

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

1 includes (a) the costs of administration of the settlement, (b) all attorneys' fees and costs, (c) Class
2 Representative Service Payment, and (d) the PAGA Penalties payment allocated 75% to the LWDA
3 and 25% to the Aggrieved Employees. (Agreement at ¶ 1.23.) Decl. Nordrehaug at ¶3.

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

6 **\$500,000** (Gross Settlement Amount)
- \$10,000 (Plaintiff's proposed service award not to exceed \$10,000 each)
7 - \$26,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- \$166,666 (Class Counsel Fees Payment - not to exceed 1/3 of settlement)
8 - \$10,000 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
- \$10,000 (Administration Expenses Payment - not to exceed amount)
9 **\$277,334** (Net Settlement Amount)

10 Based upon 292 Class Members who collectively worked 45,080 Workweeks (Agreement at ¶ 4.1), the
11 Gross Settlement Amount provides an average value of \$1,712 per Class Member and \$11 per
12 Workweek and after deductions the Net Settlement Amount provides an average recovery of \$949.77
13 per Class Member and a recovery of \$6.15 per Workweek. Decl. Nordrehaug at ¶6.

14 On April 12, 2023, the Parties participated in an all-day mediation session presided over Tripper
15 Ortman, a respected jurist and experienced mediator of wage and hour class actions. Following the
16 mediation, the Parties agreed on the basic terms of a settlement pursuant to a mediator's proposal which
17 was memorialized in the form of a Memorandum of Understanding. Decl. Nordrehaug at ¶5. The
18 Settlement is fair, reasonable and adequate, and should be preliminarily approved because there is a
19 substantial monetary payment, and there are significant litigation and class-certification risks.
20 Therefore, Plaintiff respectfully requests that this Court grant preliminary approval of the Agreement
21 and enter the proposed order submitted herewith.

22 **II. DESCRIPTION OF THE SETTLEMENT**

23 The Gross Settlement Amount is Five Hundred Thousand Dollars (\$500,000). (Agreement at
24 ¶ 1.22.) Under the Settlement, the Gross Settlement Amount consists of the following elements: (1)
25 payment of the Individual Class Payments to the Participating Class Members; (2) Class Counsel Fees
26 Payment and Class Counsel Litigation Expenses Payment; (3) Administration Expenses Payment; (4)
27 the Class Representative Service Payment to the Plaintiff; and (5) the PAGA Penalties payment.
28 (Agreement at ¶ 1.22.) The Gross Settlement Amount does not include Defendant's share of payroll

1 taxes. (Agreement at ¶ 3.1.) The Gross Settlement Amount shall be all-in with no reversion to
2 Defendant. (Agreement at ¶ 3.1.) Decl. Nordrehaug at ¶15.

3 The Agreement contains appropriate terms which have been previously approved by this Court
4 and Courts throughout California. (See Agreement at ¶¶ 1.28, 3.2, 4.3, 5.1.) The proposed Class
5 Notice also provides the required protections for the Class to opt out, object or dispute their workweeks.
6 (See Agreement at ¶¶ 8.5, 8.6, 8.7, and Exhibit A.) The additional details of the Settlement are
7 addressed in the Decl. Nordrehaug at ¶¶ 16-22. As set forth in the accompanying proof of service, the
8 LWDA has been served with this motion and the Agreement.

9 **III. CASE BACKGROUND**

10 The description of the case and claims, along with the procedural history is set forth in the
11 Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and the
12 exchange of documents and information in connection with the Action for more than a year which
13 permitted Class Counsel to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and
14 14. The Parties participated in mediation on April 12, 2023 with Tripper Ortman, which after arms'
15 length negotiations both during and after the mediation, resulted in this Settlement. Decl. Nordrehaug,
16 ¶12.

17 **IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO 18 GRANT PRELIMINARY APPROVAL**

19 California "[p]ublic policy generally favors the compromise of complex class action litigation."
20 *Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 581 (2010) quoting *Cellphone Termination Fee*
21 *Cases*, 180 Cal.App.4th 1110, 1117-18 (2009). Class action settlements are approved where the
22 proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
23 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982), cert.
24 denied, 459 U.S. 1217 (1983)).

25 Preliminary approval is the first of three steps that comprise the approval procedure for
26 settlements of class actions. The second step is the dissemination of notice of the settlement to all class
27 members. The third step is a final settlement approval hearing, at which evidence and argument
28 concerning the fairness, adequacy, and reasonableness of the settlement may be presented, and class

1 members may be heard regarding the settlement. *See Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
2 1801 (1996); *Manual for Complex Litigation, Second* §30.44 (1993); Cal. Rules of Court, rule 3.769.

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

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

18 The approval of a proposed settlement of a class action suit is a matter within the broad
19 discretion of the trial court. *Wershba, supra*, 91 Cal.App.4th at 234-235; *Dunk*, 48 Cal.App.4th 1794.
20 In considering a potential settlement for preliminary approval purposes, the trial court does not have
21 to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute,
22 and need not engage in a trial on the merits. *Wershba, supra*, 91 Cal.App.4th at 239-40; *Dunk, supra*,
23 48 Cal.App. 4th at 1807. The Ninth Circuit explained that, “the very essence of a settlement is
24 compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” *Officers for Justice*, 688

25
26 ² California courts look to federal authority on class actions. *Vasquez v. Superior Court*, 4 Cal.3d
27 800, 821 (1971). “It is well established that in the absence of relevant state precedents trial courts are
28 urged to follow the procedures prescribed in Rule 23 of the Federal Rules of Civil Procedure for
conducting class actions.” *Frazier v. City of Richmond*, 184 Cal. App.3d 1491, 1499 (1986), citing
Green v. Obledo, 29 Cal.3d 126, 145-146 (1981).

1 F.2d at 624. Thus, when analyzing the settlement, the amount is “not to be judged against a
2 hypothetical or speculative measure of what might have been achieved by the negotiators.” *Officers*
3 *for Justice*, 688 F.2d at 625, 628.

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

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

10 A number of factors are to be considered in evaluating a settlement for purposes of preliminary
11 approval. In determining whether to grant preliminary approval, the court considers whether the “(1)
12 the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, (2)
13 has no obvious deficiencies, (3) does not improperly grant preferential treatment to class representatives
14 or 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
17 are 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 these criteria for preliminary approval and
20 therefore the presumption applies.

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

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

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

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

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

28 Here, there can be no dispute that the litigation has been hard-fought with aggressive and

capable advocacy on both sides. The Parties were represented by experienced and capable counsel who zealously advocated their positions. Accordingly, “[t]here is likewise every reason to conclude that settlement negotiations were vigorously conducted at arms’ length and without any suggestion of undue influence.” *In re Wash. Public Power Supply Sec. Litig.*, 720 F. Supp. 1379, 1392 (D. Ariz 1989).

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

The proposed Settlement herein has no "obvious deficiencies" and is well within the range of possible approval. All Class Members will receive an opportunity to participate in the Settlement and receive payment according to the same formula. (Agreement at ¶ 3.2(e).) Based upon 292 Class Members who collectively worked 45,080 Workweeks (Agreement at ¶ 4.1), the Gross Settlement Amount provides an average value of \$1,712 per Class Member and \$11 per Workweek and after deductions the Net Settlement Amount provides an average recovery of \$949.77 per Class Member and a recovery of \$6.15 per Workweek. Decl. Nordrehaug, ¶6.

The calculations to compensate for the amount due for the Class at the time of the mediation were calculated by Berger Consulting, Plaintiff’s damage expert. As to the Class whose claims are at issue in this Action, Plaintiffs used the expert to analyze the data and determine the potential unpaid wages for the employees. The maximum potential damages were calculated to be \$194,211 for the alleged unpaid wages due to off-the-clock work at 5 min per day, \$1,418,171 for alleged meal and rest period damages based upon a 10% potential violation rate for shifts worked and after deducting the meal and rest premiums actually paid by Defendant, \$51,570 for alleged unreimbursed business expenses for personal cell phone usage at \$5 per month. Decl. Nordrehaug, ¶6. As a result, the total damage valuation was calculated that Defendant was subject to a maximum damage claim in the amount of \$1,663,952. As to potential penalties, Plaintiffs calculated that potential waiting time penalties were a maximum of \$1,710,438, and potential maximum wage statement penalties were \$887,172.³ Defendant vigorously disputed Plaintiff’s calculations and exposure theories. Decl.

³ While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and 226, at mediation Plaintiff recognized that these claims were subject to additional, separate defenses asserted by Defendant, including, a good faith dispute defense as to whether any premium wages for meal or rest periods or other wages were owed given Defendant’s position that Plaintiff and Class

1 Nordrehaug, ¶6.

2 Consequently, the Gross Settlement Amount of \$500,000 represents more than 30% of the
3 maximum value of the alleged damages at issue in this case at the time this Settlement was negotiated.⁴

4 The above maximum calculations should then be adjusted in consideration for both the risk of class
5 certification and the risk of establishing class-wide liability on all claims. Given the amount of the
6 settlement as compared to the potential value of claims in this case and the defenses asserted by
7 Defendant, this settlement is fair and reasonable.⁵ Clearly, the goal of this litigation has been met.
8 Decl. Nordrehaug, ¶6.

9 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
10 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
11 Defendant present serious threats to the claims of the Plaintiff and the other Class Members. Defendant
12 asserted that Defendant's practices complied with all applicable Labor laws. Defendant argued that
13 Class Members were paid for all time worked and that all work time was properly recorded. Defendant
14 contends that its meal and rest period policies fully complied with California law and Defendant did
15 not fail to provide the opportunity for legally required meal and rest breaks. Defendant could argue that
16 its payment of meal and rest period premiums is evidence of lawful practices. Defendant contend that
17 there was no failure to pay for business expenses and any cell phone usage was merely convenient and
18

19 Members were properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584
20 (2010) ("There is no willful failure to pay wages if the employer and employee have a good faith
dispute as to whether and when the wages were due.").

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

23 ⁵ See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a
24 settlement where the settlement amount constituted approximately 25% of the estimated overtime
25 damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12
26 (N.D. Cal. 2015) (granting final approval where "the proposed Total Settlement Amount represents
approximately 10% of what class might have been awarded had they succeeded at trial."); *Viceral v.*
27 *Mistras Grp., Inc.*, 2016 WL 5907869 (N.D. Cal. 2016) (approving wage and hour class action
settlement amounting to 8.1% of full value); *Ma v. Covidien Holding, Inc.*, 2014 WL 2472316, (C.D.
28 Cal. 2014) (approving wage and hour class action settlement worth "somewhere between 9% and 18%"
of maximum valuation).

1 voluntary such that reimbursement was not legally required. Finally, Defendant could argue that the
2 Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), weakened Plaintiff's
3 claims, on liability, value, and class certifiability as to the meal and rest period claims. Defendant also
4 argues that based on its facially lawful practices, Defendant acted in good faith and without willfulness,
5 which if accepted would negate the claims for waiting time penalties and/or inaccurate wage
6 statements. If successful, Defendant's defenses could eliminate or substantially reduce any recovery
7 to the Class. While Plaintiff believes that these defenses could be overcome, Defendant maintains these
8 defenses have merit and therefore present a serious risk to recovery by the Class. Decl. Nordrehaug,
9 ¶ 24.

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

19 After arm's length negotiations between experienced and informed counsel, the Parties
20 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of
21 \$500,000. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

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

26 2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
27 (9th Cir. 2000)).
28

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

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

8 Plaintiff will apply to the Court for Class Representative Service Payment in consideration for
9 his service and for the risks undertaken on behalf of the Class. (Agreement at ¶ 3.2(a).) Plaintiff
10 performed his duties admirably by working with Class Counsel over the course of litigation. The
11 Declaration of the Plaintiff is submitted herewith in support. Decl. Nordrehaug at ¶27. At this stage,
12 the requested service award of \$10,000 is well within the accepted range of awards for purposes of
13 preliminary approval. *See e.g. Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D.
14 Cal. 2018) (awarding \$12,500 where average class member payment was \$351); *Holman v. Experian*
15 *Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014) (approving \$10,000 service
16 award where class member recovery was \$375); *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008
17 WL 4473183, *7 (S.D.Cal. Oct. 06, 2008) (awarding \$25,000 service award to each of six plaintiffs
18 in overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D.Cal. Jan. 27 2007)
19 (awarding \$25,000 service award in overtime class action and a pool of \$100,000 in enhancements).
20 As explained in *Glass*, service awards are routinely awarded to class representatives to compensate the
21 employees for the time and effort expended on the case, for the risk of litigation, for the fear of suing
22 an employer and retaliation there from, and to serve as an incentive to vindicate the statutory rights of
23 all employees. 2007 WL 221862 at *16-17.

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

26 The stage of the proceedings at which this Settlement was reached also militates in favor of
27 preliminary approval and ultimately, final approval of the Settlement. Class Counsel has conducted
28 a thorough investigation into the facts of the class action. Class Counsel began investigating the Class
Members' claims before the Action were filed, and during the course of litigation, Class Counsel

engaged in informal discovery to obtain necessary information. Class Counsel conducted a review and analysis of the relevant documents and data. Class Counsel was also experienced with the claims at issue here, as Class Counsel previously litigated and settled similar claims in other actions. Accordingly, the agreement to settle did not occur until Class Counsel possessed sufficient information to make an informed judgment regarding the likelihood of success on the merits and the results that could be obtained through further litigation. Decl. Nordrehaug at ¶28.

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

V. THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES ONLY

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

All individuals who are, or previously were, employed by Defendant Boeing Aerospace Operations, Inc. in California and classified as a non-exempt employee at any time during the Class Period.

(Agreement at ¶ 1.5.)

The Class Period is February 4, 2018 through March 30, 2023. (Agreement at ¶ 1.13.)

A. California Code of Civil Procedure § 382

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

Code of Civil Procedure Section 382 authorizes class actions “when the question is one 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 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

1 questions of law or fact; (2) class representatives with claims or defenses typical of the
2 class; and (3) class representatives who can adequately represent the class.

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

4 While Defendant reserves all rights to dispute that the Plaintiff can satisfy these requirements,
5 the Parties agree that Defendant will not dispute that these requirements may be satisfied in this case
6 for purposes of settlement only and therefore, the proposed Class should be certified for purposes of
7 settlement only. (Agreement at ¶ 2.8.)

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

9 Plaintiff brings this action on behalf of a Class of non-exempt employees of Defendant during
10 the Class Period. Plaintiff asserts that all of these individuals are ascertainable because the class
11 members can readily be determined through examination of Defendant's files. Given that the Class
12 consists of 292 individuals, Plaintiff maintains that numerosity is clearly satisfied. *See Bowles v.*
13 *Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose v. City of*
14 *Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.)
15 Here, Plaintiff asserts that the 292 current and former employees that comprise the Class can be
16 identified based on Defendant's records and are sufficiently numerous for class certification. Decl.
17 Nordrehaug at ¶30.

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

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

24 Commonality exists if there is a predominant common legal question regarding how an
25 employer's policies impact its employees. *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524,
26 1536 (2008) ("[T]he common legal question remains the overall impact of Diva's policies on its
27 drivers.") Whether the plaintiff is likely to prevail on their theory of recovery is irrelevant at the
28 certification stage since the question is "essentially a procedural one that does not ask whether an action

1 is legally or factually meritorious.” *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2003).

2 Here, Plaintiff contends that common questions of law and fact are present, specifically the
3 common questions of whether Defendant’s employment practices were lawful, whether Defendant
4 failed to provide meal and rest periods to Class Members, whether Class members were lawfully
5 compensated for all hours worked, whether Defendants failed to provide required expense
6 reimbursement, and whether Class Members are entitled to damages and penalties as a result of these
7 practices. Plaintiff contends that certification of this Class is appropriate because Defendant allegedly
8 engaged in uniform practices with respect to the Class Members. As a result, these common questions
9 of liability could be answered on a class wide basis. Decl. Nordrehaug, ¶30. Defendant disputes that
10 common questions predominate but will not oppose such a finding for purposes of this Settlement only.

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

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

18 In this Action, Plaintiff contend that the typicality requirement is fully satisfied. Plaintiff, like
19 every other member of the Class, was employed by Defendant as non-exempt employees, and, like
20 every other member of the Class, were subject to the same employment practices. Plaintiff, like every
21 other member of the Class, also claims owed compensation as a result of the Defendant’s uniform
22 company policies and practices. Thus, the claims of Plaintiff and the members of the Class arise from
23 the same course of conduct by Defendant, involve the same issues, and are based on the same legal
24 theories. Decl. Nordrehaug at ¶30. For purposes of settlement, Plaintiff asserts that the typicality
25 requirement is met as to the common issues presented in this case. Defendant does not oppose a finding
26 of typicality for purposes of this Settlement only.

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

28 Plaintiff contends that the Class Members are adequately represented here because Plaintiff and

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

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

16 To certify a class, the Court must also determine that a class action is superior to other available
17 methods for the fair and efficient adjudication of the controversy. “Where classwide litigation of
18 common issues will reduce litigation costs and promote greater efficiency, a class action may be
19 superior to other methods of litigation.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir.
20 1996). As courts have previously observed:

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

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

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

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

2 The Court has broad discretion in approving a practical notice program. *7- Eleven Owners for*
3 *Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1164 (2000). The Parties have agreed
4 upon procedures by which the Class Members will be provided with written notice of the Settlement
5 similar to that approved and utilized in hundreds of class action settlements. (See Exhibit “A” to the
6 Agreement.) Decl. Nordrehaug at ¶32. The Class Notice includes all relevant information. A Spanish
7 translation of the Class Notice Packet will be included in the mailing. (Agreement at ¶ 1.11.) The
8 Class Notice will state that the Class Members shall have sixty (60) days from the date that the Class
9 Notice is mailed to them (the “Response Deadline”) to request exclusion (opt-out) or to submit a written
10 objection. (Agreement at ¶¶ 1.42, 8.5, 8.7.) Class Members shall be given the opportunity to object
11 to the Settlement and the request for attorneys’ fees and expenses, and to appear at the Final Approval
12 Hearing. (Agreement at ¶ 8.7.) This notice program was designed to meaningfully reach the Class
13 Members and it advises them of all pertinent information concerning the Settlement. Decl. Nordrehaug
14 at ¶32. The mailing and distribution of the Class Notice satisfies the requirements of due process and
15 is the best notice practicable under the circumstances and complies with Rules of Court 3.766 and
16 3.769(f).

17 **VII. CONCLUSION**

18 Plaintiffs respectfully request that the Court preliminarily approve the proposed settlement and
19 sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the final
20 approval hearing for the proposed date of July 26, 2024, which date is at least one hundred twenty (120)
21 days from the date of Preliminary Approval.

22 Dated: February 5, 2024

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

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