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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

AARON GORMAN, an individual, on behalf
of himself, and on behalf of all persons
similarly situated,

Plaintiffs,

v.

DRUMMAC, INC., a Florida corporation;
MORAN ENVIRONMENTAL
RECOVERY, LLC, a Delaware limited
liability company; MORAN TOWING
CORPORATION, a New York corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No. 34-2022-00313456

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

Date: December 2, 2022
Time: 9:00 a.m.
Department: 28

Trial Date: Not Set
Action Filed: January 4, 2022

Reservation No. 2619356

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1 **I. INTRODUCTION**

2 Plaintiff AARON GORMAN (“Plaintiff”) respectfully submits this memorandum in support
3 of the motion for preliminary approval of the Class Action Complaint (*Aaron Gorman v. Drummac,*
4 *Inc., et al.*, Case No. 34-2022-00313456, filed on or about January 4, 2022) (the “Action”) with
5 Defendants DRUMMAC, INC., MORAN ENVIRONMENTAL RECOVER, LLC, and MORAN
6 TOWING CORPORATION (“Defendants”), and seek entry of an order: (1) preliminary approving
7 the proposed settlement of the Action with Defendants; (2) approving the form and method for
8 providing class-wide notice; (3) directing that notice of the proposed settlement be given to the
9 class; and (4) scheduling a final approval hearing date to consider Plaintiff’s motion for final
10 approval of the settlement and entry of the Judgment, and Plaintiff’s motion for approval of
11 attorneys’ fees and litigation expenses.

12 Plaintiff and Defendants have reached a full settlement of the Action, which is embodied in
13 the Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims (the
14 “Agreement”). A copy of the fully executed Agreement is attached as Exhibit #1 to the Declaration
15 of Shani O. Zakay (“Decl. Zakay”), served and filed herewith. The Settlement is fair, reasonable,
16 and adequate, and should be preliminarily approved. Plaintiff respectfully requests that this Court
17 grant preliminary approval of the Agreement and enter the proposed order submitted herewith.

18 **II. DESCRIPTION OF THE SETTLEMENT**

19 The Gross Settlement Amount to be paid by Defendants is Three Hundred Sixty Thousand
20 Dollars (\$360,000). Under the Settlement, the Gross Settlement Amount consists of the following
21 elements: (1) the Individual Settlement Payments to Settlement Class Members, (2) the Class
22 Counsel Award (for fees and costs), (3) Settlement Administration Costs, (4) the PAGA Settlement,
23 (5) the Aggrieved Employee Payments, and (6) the Class Representative Service Award to the
24 Plaintiff. The Gross Settlement Amount does not include Defendants’ share of employer payroll
25 taxes, which Defendants shall pay to the Administrator separately. The Gross Settlement Amount
26 shall be all-in with no reversion to Defendants. (Decl. Zakay at ¶ 13.)

27 After Final Approval and the Judgment becomes final (the “Effective Date,” as defined in
28 the Agreement), Defendants will fund the Gross Settlement Amount in one lump sum payment

1 within fourteen (14) calendar days. No later than fifteen (15) days after Defendants fund the Gross
2 Settlement Amount, the Settlement Administrator will pay: the Settlement Class Members their
3 Individual Settlement Payments; Class Counsel their Class Counsel Award (consisting of fees and
4 costs); the LWDA its share of the PAGA Settlement; the Aggrieved Employees their Individual
5 PAGA Payments; and the Settlement Administrator its Settlement Administration Costs, all in the
6 amounts approved by the Court. (Decl. Zakay at ¶ 14.)

7 The Net Settlement Amount shall equal the net amount available for Individual Settlement
8 Payments to Settlement Class Members from the Gross Settlement Amount after deducting the
9 Court-approved amounts for the Class Representative Service Award, the Class Counsel Award,
10 the PAGA Settlement, and the Settlement Administration Costs. The Settlement Administrator will
11 pay an Individual Settlement Payment from the Net Settlement Amount to each Settlement Class
12 Member. The submission of a claim form is not required for the Settlement Class Member to be
13 paid his or her Individual Settlement Payment. The Individual Settlement Payment for each
14 Settlement Class Member will be calculated by dividing the Net Settlement Amount by the total
15 number of workweeks worked by all Settlement Class Members during the Class Period and then
16 multiplying that amount (the “Workweek Value”) by the total number of workweeks worked by
17 each Settlement Class Member during the Class Period. The entire Net Settlement Fund shall be
18 distributed. (Decl. Zakay at ¶ 15-16.)

19 Class Members will have forty-five (45) days after the mailing of the Settlement Notice to
20 exclude themselves or submit written objections by following the directions in the Settlement
21 Notice. All Class Members who do not “opt out” will be deemed Settlement Class Members and
22 will be bound by the Settlement. The Notice will advise the Class Members of their right to object
23 to the Settlement. (Decl. Zakay at ¶ 17.)

24 If a check is returned to the Settlement Administrator, the Settlement Administrator will
25 make all reasonable efforts to obtain a correct address for the Settlement Class Member and re-mail
26 the check to the Settlement Class Member at his or her correct address. If a Settlement Class
27 Member’s Individual Settlement Payment check is not cashed within 180 days after the Settlement
28 Administrator’s last mailing to the Settlement Class Member, the funds from such uncashed check

1 will be transmitted to the Controller of the State of California to be held pursuant to the Unclaimed
2 Property Law, California Civil Code § 1500 *et seq.*, in the names and corresponding amounts
3 associated with each Class Member and/or Aggrieved Employee whose check(s) are cancelled.
4 (Decl. Zakay at ¶ 18.)

5 The Parties have agreed to use ILYM Group as the Settlement Administrator. Payment of
6 the expenses of the Settlement Administrator from the Gross Settlement Fund shall be made for the
7 expenses of effectuating and administering the Settlement. The Settlement Administrator shall
8 receive payment for services estimated at \$9,000. (Decl. Zakay at ¶ 19.)

9 Subject to Court approval, the Agreement provides, as part of the Class Counsel Award, (a)
10 for Class Counsel to be awarded a sum not to exceed 1/3 of the Gross Settlement Amount for their
11 fees and (b) an award of litigation expenses in an amount not to exceed \$25,000. In support of this
12 request, Class Counsel will provide evidentiary support, including lodestar method calculations.
13 Subject to Court approval, the Agreement provides for payment of a Class Representative Service
14 Award of no more than \$10,000 for Plaintiff or such lesser amount as may be approved by the Court
15 at Final Approval.¹ Defendants will not oppose a motion for approval of attorneys' fees, costs and
16 a service award consistent with the Agreement. (Decl. Zakay at ¶ 20.)

17 Subject to Court approval, \$20,000 will be paid for settlement of civil penalties under
18 PAGA, Labor Code Section 2698 *et seq.* Pursuant to the requirements of Labor Code §2699(i), the
19 PAGA Payment shall be allocated \$15,000.00 (75%) to the LWDA (the "LWDA Payment") as the
20 LWDA's share of the settlement of civil penalties and \$5,000.00 (25%) for distribution as Individual
21 PAGA Payments to Aggrieved Employees. (Decl. Zakay at ¶ 21.)

22 **III. CASE BACKGROUND**

23 On October 25, 2021, Plaintiff filed a Notice of Violations with the LWDA and served the
24 same on Defendants. On January 4, 2022, Plaintiff filed the class action complaint in this Court,
25 asserting claims for: (1) unfair competition; (2) failure to pay minimum wages; (3) failure to pay
26

27 ¹ Plaintiff will address the reasonableness of this award when filing their final approval papers,
28 including the enhancement factors set forth in *Golba v. Dick's Sporting Goods, Inc.*, 238 Cal. App.
4th 1251 (2015) and *Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785 (2009).

1 overtime wages; (4) failure to provide required meal breaks; (5) failure to provide required rest
2 breaks; (6) failure to provide accurate itemized wage statements; (7) failure to provide wages when
3 due; (8) unpaid sick pay; and (9) violation of the Private Attorneys General Act. (Decl. Zakay at ¶
4 7.)

5 Plaintiff seeks to represent a putative class of all non-exempt employees who are or
6 previously were employed by Defendants and performed work in California during the period of
7 January 4, 2018 to October 12, 2022 (the “Class Members”). The Complaint generally alleges the
8 causes of action listed above. The Action seeks unpaid wages, statutory and PAGA penalties,
9 attorneys’ fees, and litigation costs². (Decl. Zakay at ¶ 8.)

10 Prior to mediation, the Parties engaged in investigation and the exchange of documents and
11 information in connection with the Action. As part of this process, Defendants provided a
12 significant sample of time records and payroll records, as well as other documents and information,
13 to Class Counsel to review and analyze. On July 12, 2022, the Parties participated in an all-day
14 mediation presided over by Steven J. Rottman, Esq., a mediator of wage and hour class actions. At
15 the conclusion of the full-day mediation, the mediator made a mediator’s proposal, which was
16 accepted by both Parties. The Parties documented the agreement in the form of a Settlement
17 Agreement, which was signed by the Parties and is now presented to this Court for preliminary
18 approval. (Decl. Zakay at ¶ 9.)

19 Although a resolution has been reached, Defendants deny that they have violated any
20 applicable law, committed any wrong against Plaintiff or any other current or former employee, or
21 that it has otherwise damaged Plaintiff or any other current or former employee in any way. Further,
22 Defendants contend that class certification would be inappropriate for any reason other than for
23 settlement. Plaintiff contends that Defendants violated California wage and hour laws. Plaintiff
24 further contends that the Action is appropriate for class certification on the basis that the Plaintiff’s
25 claims meet the requisites for class certification. Without admitting that class certification is proper,
26 Defendants have stipulated that the above Class may be certified for settlement purposes only. The
27

28 ² Plaintiff will provide a lodestar analysis for the fees and supporting evidence of the costs with
the final approval papers.

1 Parties agree that certification for settlement purposes is not an admission that class certification
2 would be proper if the class certification issues were litigated. Further, the Agreement is not
3 admissible in this or any other proceeding as evidence that the Class could be certified absent a
4 settlement. Solely for purposes of settling the Action, the Parties stipulate and agree that the
5 requisites for establishing class certification with respect to the Class, as defined above, are
6 satisfied. (Decl. Zakay at ¶ 11.)

7 Class Counsel has conducted a thorough investigation into the facts of the action. Class
8 Counsel has diligently evaluated the Class Members' claims against Defendants. Prior to the
9 mediation, counsel for Defendants provided Class Counsel with access to the necessary data and
10 information to evaluate the claims by the Class. Class Counsel reviewed the production of
11 documents from the Defendants and conducted an extensive review of a significant sample of time
12 records and data with the assistance of an expert (Berger Consulting Group). Based on the foregoing
13 and their own independent investigation, evaluation and experience, Class Counsel believe that the
14 Settlement is fair, reasonable, and adequate and is in the best interest of the Class in light of all
15 known facts and circumstances, including the risk of significant delay, defenses asserted by
16 Defendants, and potential appellate issues. (Decl. Zakay at ¶ 12.)

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

19 When a proposed class-wide settlement is reached, the settlement must be submitted to the
20 court for approval. (2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) at §11.41,
21 p.11-87.) California "[p]ublic policy generally favors the compromise of complex class action
22 litigation." (*Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 581 (2010) (quoting *Cellphone*
23 *Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117-18 (2009).) Class action settlements are
24 approved where the proposed settlement is "fair, adequate and reasonable." (*Dunk v. Ford Motor*
25 *Co.*, 48 Cal. App. 4th 1794, 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d
26 615, 625 (9th Cir. 1982), cert. denied, 459 U.S. 1217 (1983).)

27 The primary question presented on an application for preliminary approval of a proposed
28 class action settlement is whether the proposed settlement is "within the range of possible approval."

(*Manual for Complex Litigation*, Second §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir. 1982).) Preliminary approval is merely the prerequisite to giving notice so that “the proposed settlement... may be submitted to members of the prospective Class for their acceptance or rejection.” (*Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.*, 323 F. Supp. 364, 372 (E.D. Pa. 1970); *Sayaman v. Baxter Healthcare Corp.*, 2010 U.S. Dist. LEXIS 151997, *3 (C.D. Cal. 2010).) There is an initial presumption of fairness when a proposed settlement, which was negotiated at arm’s length by counsel for the Class, is presented for court approval. (*Newberg*, 3d Ed., §11.41, p.11-88; *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 245 (2001) [citation omitted]; *see also Cho v. Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th 734, 742-45 (2009) (upholding trial court’s determination that settlement was “fair, reasonable and adequate” where the settlement “provided valuable benefits to the class ... that were ‘particularly valuable in light of the risks plaintiff would have faced if she proceeded to litigate her case.’”).) However, the ultimate question of whether the proposed settlement is fair, reasonable, and adequate is made after notice of the settlement is given to the Class Members and a final settlement hearing is held by the Court.

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

Approval of a proposed settlement of a class action suit is a matter within the broad discretion of the trial court. (*Wershba*, 91 Cal. App. 4th at 234-235; *Dunk*, 48 Cal. App. 4th at 1794.) In considering a potential settlement for preliminary approval purposes, the trial court does not have to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute, and need not engage in a trial on the merits. (*Wershba, supra*, 91 Cal. App. 4th at 239-40; *Dunk, supra*, 48 Cal. App. 4th at 1807.) The Ninth Circuit explains, “the very essence of a settlement is compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” (*Officers for Justice v. Civil Service Com’n of City and County of S.F.*, 688 F.2d 615, 624 (9th Cir. 1982).) The question whether a proposed settlement is fair, reasonable, and adequate necessarily requires a judgment and evaluation by the attorneys for the parties based upon a comparison of “‘the terms of the compromise with the likely rewards of litigation.’” (*Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir. 1982), cert. denied 464 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders of*

1 *TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)).) Thus, when analyzing the
2 settlement, the amount is “not to be judged against a hypothetical or speculative measure of what
3 might have been achieved by the negotiators.” (*Officers for Justice*, 688 F.2d at 625, 628.) With
4 regard to class action settlements, the opinions of counsel should be given considerable weight both
5 because of counsel’s familiarity with this litigation and previous experience with cases such as
6 these. (*Id.* at 625.) “The recommendations of plaintiffs’ counsel should be given a presumption of
7 reasonableness.” (*Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 622 (N.D. Cal. 1979).) As a result, courts
8 hold that the recommendation of counsel is entitled to significant weight. (*Nat’l Rural Telecomms.*
9 *Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004).)

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

11 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,
13 (2) has no obvious deficiencies, (3) does not improperly grant preferential treatment to class
14 representatives or segments of the class, and (4) falls within the range of possible approval.” (*In re*
15 *Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007).) No one factor should be
16 determinative. Here, the Settlement meets all of these criteria for preliminary approval.

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

19 This Settlement is the result of extensive and hard-fought litigation and negotiations before
20 an experienced and well-respected mediator. Defendants denied and continue to deny any
21 wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff and Class
22 Counsel have determined that it is desirable and beneficial to the Class Members to put to rest the
23 Released Class Claims.³ (Decl. Zakay at ¶ 5.) Plaintiff and Class Counsel recognize the expense
24 and time involved in continuing to litigate and ultimately trying the Action against Defendants
25 through possible appeals which could take several years. Class Counsel have also taken into account
26 the uncertain outcome and risk of litigation, especially in complex actions such as the one here.

27 _____
28 ³ Released Class Claims are defined in the Settlement Agreement at ¶ I(DD) and are limited to
claims based on or reasonably related to the claims asserted in the Action.

1 Class Counsel are also mindful of, and recognize, the inherent problems of proof under, and asserted
2 defenses to, the claims asserted in the Action. Based upon their evaluation, Plaintiff and Class
3 Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the
4 Class Members. (Decl. Zakay at ¶ 22.)

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

11 **2. The Settlement Has No “Obvious Deficiencies” and Falls Within the Range of** 12 **Approval**

13 The proposed Settlement here has no “obvious deficiencies” and is well within the range of
14 possible approval. All Class Members will receive an opportunity to participate in the Settlement
15 and receive payment according to the same formula if they do not opt out. (Agreement at ¶
16 III(O)(2).)

17 Defendants’ total exposure for the alleged violations at the time this Settlement was
18 negotiated was calculated by BCG, Plaintiff’s damage expert. Plaintiff used BCG to analyze the
19 data and determine the potential damages for the employees. For the Class, Plaintiff estimates that
20 Defendants were subject to maximum liability for damages in the amount of \$2,064,468.00
21 consisting of \$64,755.00 for unpaid wages, \$811,490.00 for rest periods, and \$811,490.00 for meal
22 periods. In addition, Plaintiff’s expert calculated \$343,844.00 in waiting time penalties and
23 \$168,350.00 for wage statement penalties.⁴ Finally, Plaintiff’s expert calculated that Defendants

24 ⁴ While Plaintiff alleged claims for statutory penalties, they recognize that this claim is subject to
25 various defenses asserted by Defendants. Plaintiff’s claims pursuant to Labor Code Section 226 and
26 various PAGA penalties are also subject to a good faith defense as to whether any premium wages
27 for meal or rest periods or other wages were owed given Defendants’ position that Plaintiff and the
28 Class were properly compensated. (*See Reber v. AIMCO/Bethesda Holdings, Inc.*, 2008 WL
4384147, at *9 (C.D. Cal. Aug. 25, 2008) (granting defendant’s motion for summary judgment on
claim for failure to provide accurate itemized wage statements “because a good faith dispute exists...
[therefore, defendant] was not ‘knowing and intentional’ in failing to provide [Section 226]
statements”).)

1 could be liable for PAGA penalties in an amount of \$703,200.00.⁵ Consequently, the Settlement of
2 \$360,000 represents approximately 21.3% of the maximum estimated *damages*, and 12.4% of the
3 maximum combination of damages and penalties to the Class, assuming all of these amounts could
4 be proved at trial. Given the amount of the Settlement as compared to the potential value of claims
5 in this case, the Settlement is fair and reasonable. Clearly, the goal of this litigation – to provide
6 compensation to Class Members for unpaid time and for allegedly missed meal and rest breaks –
7 has been met. (Decl. Zakay at ¶ 6.)

8 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal.
9 2015) the court approved a settlement of an action claiming unpaid wages where the settlement
10 amount constituted roughly 10% of the estimated actual damages to the class. Here, the settlement
11 consideration exceeds the percentage approved in *Stovall-Gusman*. In *Stovall-Gusman*, the court
12 ruled that the settlement which represented approximately 10% of the estimated loss to the class
13 was fair, reasonable, and adequate. As a result, this Settlement, which exceeds the percentage
14 approved in *Stovall-Gusman*, is entitled to preliminary approval.

15 Moreover, where both sides face significant uncertainty, the attendant risks favor settlement.
16 (*Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026.) Here, a number of defenses
17 asserted by Defendants presented serious threats to the claims of the Plaintiff and the other Class
18 Members. For instance, Defendants asserted that the employment practices complied with all
19 applicable Labor Laws. Specifically, Defendants argued that the Supreme Court decision in *Brinker*
20 *v. Superior Court*, 53 Cal. 4th 1004 (2012) weakened, if not eliminated, Plaintiff's claims, on
21 liability, value, and class certifiability as to the meal and rest period claims. A major component of
22 the damages alleged to have been suffered by the Class Members are attributed to missed meal and

23 ⁵ Plaintiff recognizes that the PAGA penalties claim is also subject to various defenses by
24 Defendants, including that Class Members may not be able to recover subsequent penalties until, at
25 a minimum, Plaintiff provided PAGA notice. (*See Amaral v. Cintas Corp.*, 163 Cal. App. 4th 1157,
26 1209 (2008) (“Until the employer has been notified that it is violating a Labor Code provision
27 (whether or not the commissioner or court chooses to impose penalties), the employer cannot be
28 presumed to be aware that its continuing underpayment of employees is a “violation” subject to
penalties.”).) In addition, Plaintiff recognizes that PAGA claims bear some risk. (*See Carrington*
v. Starbucks Corp., 30 Cal. App. 5th 504 (2018).) In *Carrington*, while the plaintiff prevailed on
his PAGA claim at trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing
the employer's good faith attempt at complying with the law. (*Id.* at 517.)

1 rest breaks. Before and during the mediation, Defendants aggressively argued that Defendants'
2 policies and culture afforded the Class Members an opportunity to take timely meal and rest breaks,
3 and that employees like the Plaintiff *chose* not to take compliant breaks. Defendants argued,
4 therefore, that under the *Brinker* decision they have no liability for the missed breaks whatsoever.
5 Defendants argued that they adopted and strictly enforced lawful policies, and afforded Plaintiff
6 and the Class Members compliant meal and rest breaks. If successful, these defenses could eliminate
7 or substantially reduce any recovery to the Class. While Plaintiff believes that these defenses, and
8 others, could be overcome, Defendants maintain these defenses have merit and therefore present a
9 serious risk to recovery for the Class. (Decl. Zakay at ¶ 24.)

10 There was also a significant risk that, if the Action was not settled, Plaintiff would be unable
11 to obtain class certification and thereby not recover on behalf of any employee other than
12 themselves. Defendants argued that the individual experience of each employee varied with respect
13 to the alleged claims. While other cases have approved class certification of wage and hour claims,
14 class certification in this action would have been hotly disputed and was by no means a foregone
15 conclusion. Finally, even if class certification was successful, as demonstrated by the California
16 Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are
17 significant hurdles to overcome for a class-wide recovery even where the class has been certified.
18 (Decl. Zakay at ¶ 25.) Here, the risk of further litigation is substantial. After arm's-length
19 negotiations between experienced and informed counsel, the Parties recognized the potential risks
20 and agreed on the Settlement.

21 **3. The Settlement Does Not Improperly Grant Preferential Treatment to the** 22 **Class Representative or Segments of The Class**

23 The relief provided in the Settlement will benefit all members of the Class who do not opt
24 out. The Settlement does not improperly grant preferential treatment to the Plaintiff or segments of
25 the Class in any way. Each Settlement Class Member will be entitled to a cash payment based on
26 the plan of allocation described herein. Each Settlement Class Member's Individual Settlement
27
28

1 Payment will be determined based upon the weeks worked by that employee during the prescribed
2 Class Period. (Decl. Zakay at ¶ 4.)

3 Plaintiff will apply to the Court for a Class Representative Service Award in consideration
4 for his service, and for the risks undertaken on behalf of the Class. Plaintiff performed his duties
5 admirably by working with Class Counsel. The requested Plaintiff's service payment is well within
6 the accepted range of awards for purposes of preliminary approval. (See Decl. Zakay at ¶ 27.)

7 **4. The Stage Of The Proceedings Are Sufficiently Advanced To Permit**
8 **Preliminary Approval Of The Settlement**

9 The stage of the proceedings at which this Settlement was reached also militates in favor of
10 preliminary approval and ultimately, final approval of the Settlement. Class Counsel has conducted
11 a thorough investigation into the facts of the class action. Class Counsel began investigating the
12 Class Members' claims before this action was filed. Prior to the mediation, Class Counsel performed
13 significant review and analysis of Defendants' documents, time records and pay records. Class
14 Counsel engaged in a thorough research and analysis of the relevant claims and data. Class Counsel
15 are also experienced with the claims at issue here, as Class Counsel previously litigated and settled
16 similar claims in numerous other actions. Accordingly, the Settlement did not occur until Class
17 Counsel possessed sufficient information to make an informed judgment regarding the likelihood
18 of success on the merits and results that could be obtained through further litigation. (Decl. Zakay
19 at ¶ 28.)

20 There can be no doubt that Counsel for both Parties possessed sufficient information to make
21 an informed judgment regarding the likelihood of success on the merits and the results that could
22 be obtained through further litigation.

23 In *Glass v. UBS Financial Services, Inc.*, the Northern District of California granted final
24 approval of an unpaid wages action although in *Glass* no formal discovery had been conducted prior
25 to the settlement:

26 Here, no formal discovery took place prior to settlement. As the Ninth Circuit has
27 observed, however, "[i]n the context of class action settlements, 'formal discovery
28 is not a necessary ticket to the bargaining table' where the parties have sufficient
information to make an informed decision about settlement." See *In re Mego*

1 *Financial Corp. Securities Litigation*, 213 F.3d [454,] 459. (*Glass*, 2007 WL
221862 at *4.)

2 Here, Class Counsel was in a strong position to evaluate the fairness of this Settlement
3 because Class Counsel had the same, if not more, sufficient information, as well as an informal
4 document production.

5 **V. THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES**

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

10 The California Class:

11 **“all non-exempt employees who are or previously were employed by Defendants and**
12 **performed work in California during the period of January 4, 2018 to October 12,**
2022.” (Agreement at ¶ I(G-H).)

13 The Parties estimate that there are 160 Class Members who collectively worked approximately
14 11,501 workweeks. (Decl. Zakay at ¶ 30.)

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

16 Plaintiff seeks certification of this Class for settlement purposes under California Code of
17 Civil Procedure section 382. While Defendants reserve all rights to dispute that the Plaintiff can
18 satisfy any of these requirements, Defendants will not dispute that these requirements may be
19 satisfied in this case for purposes of settlement and therefore, the proposed Class should be certified
20 for purposes of settlement only.

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

22 Here, the approximately 160 current and former employees that comprise the Class are
23 sufficiently numerous for class certification. (*See Bowles v. Superior Court*, 44 Cal.2d 574 (1955)
24 (class with 10 members sufficiently numerous); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934
25 (1981) (class of 48 members satisfies numerosity requirement.)) All of these employees are
26 ascertainable because the Class Members can readily be determined through examination of
27 Defendants’ employment files. (Decl. Zakay at ¶ 30.) For purposes of settlement only, Defendants
28 will not oppose a finding of numerosity.

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

2 Predominance of common issues of law or fact does not require that the common issues be
3 dispositive of the entire controversy or even that they be dispositive of all liability issues. (1
4 *Newberg on Class Actions*, Section 4.25 at 4-82, 4-83 (1992).) “Predominance is a comparative
5 concept, and ‘the necessity for class members to individually establish eligibility and damages does
6 not mean individual fact questions predominate.’” (*Sav-On*, 34 Cal. 4th at 334.) Commonality exists
7 if there is a predominant common legal question regarding how an employer’s policies impact its
8 employees. (*Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524, 1536 (2008) (“[T]he
9 common legal question remains the overall impact of Diva’s policies on its drivers.”).) Whether
10 Plaintiff is likely to prevail on his theory of recovery is irrelevant at the certification stage since the
11 question is “essentially a procedural one that does not ask whether an action is legally or factually
12 meritorious.” (*Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2003).)

13 Here, Plaintiff contends that common questions of law and fact are present. Specifically: (i)
14 whether Defendants failed to pay Class Members for all hours worked; (ii) whether Defendants
15 failed to provide meal and rest periods to Class Members; (iii) whether Defendants failed to timely
16 furnish accurate, itemized and legal wage statements; (iv) whether Defendants subjected Class
17 Members to unfair business practices; and (v) whether Defendants are liable for attorneys’ fees and
18 costs. (Decl. Zakay at ¶ 30.) Defendants will not oppose a finding of commonality for purposes of
19 settlement only.

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

21 The typicality requirement requires Plaintiff to demonstrate that the members of the class
22 have the same or similar claims as Plaintiff. “The typicality requirement is met when the claims of
23 the Plaintiff [] arise from the same event or are based on the same legal theories.” (*Tate v.*
24 *Weyerhaeuser Co.*, 723 F.2d 598, 608 (8th Cir. 1983).) In *Hanlon v. Chrysler Co.*, 150 F.3d 1011
25 (9th Cir. 1998), the Ninth Circuit held that “[u]nder the rule’s permissive standards, representative
26 claims are ‘typical’ if they are reasonably coextensive with those of absent class members; they
27 need not be substantially identical.” (50 F.3d at 1020.)
28

1 In the instant case, Plaintiff contends that the typicality requirement is fully satisfied.
2 Plaintiff, like every other member of the Class was employed by Defendants and is a member of
3 the Class. Plaintiff was subject to the same employment practices, meal and rest periods, and
4 received similar wage statements. Thus, the claims of the Plaintiff and the Class Members arise
5 from the same course of conduct by the Defendants, involve the same employment policies, and are
6 based on the same legal theories. (Decl. Zakay at ¶ 30.) For purposes of settlement only, Defendants
7 will not oppose typicality.

8 **E. The Class Representative Fairly and Adequately Protected the Class**

9 The Class Members are adequately represented because Plaintiff and Class Counsel (a) do
10 not have any conflicts of interest with other Class Members, and (b) will prosecute the case
11 vigorously on behalf of the class. (*See Hanlon*, 150 F.3d at 1020.) Plaintiff is well aware of his
12 duties as a representative of the Class and has actively participated in the prosecution of this case
13 to date. First, Plaintiff effectively communicated with Class Counsel, provided documents to them
14 and participated investigation and negotiations in the Action. Second, Plaintiff retained competent
15 counsel who are experienced in employment class actions. Third, there is no antagonism between
16 the interests of the Plaintiff and those of the Class. Both the Plaintiff and the Class Members seek
17 monetary relief under the same set of facts and legal theories. (Decl. Zakay at ¶ 30.)

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

19 To certify a class, the Court must determine that a class action is superior to other available
20 methods for the fair and efficient adjudication of the controversy. “Where classwide litigation of
21 common issues will reduce litigation costs and promote greater efficiency, a class action may be
22 superior to other methods of litigation.” (*Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th
23 Cir. 1996).) Here, a class action is the superior mechanism for resolution of the claims as pled by
24 the Plaintiff. Defendants will not dispute such a finding 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
27 agreed upon procedures by which the Class Members will be provided with written notice of the
28 Settlement similar to that approved and utilized in hundreds of class action settlements. The

1 Settlement Notice, drafted jointly and agreed upon by the Parties through their respective counsel
2 and to be approved by the Court, includes all relevant information. (See Exhibit A to the
3 Agreement.) The Settlement Notice will state that the Class Members shall have forty-five (45)
4 days from the date that the Settlement Notice is mailed to them to request exclusion or to submit an
5 objection. The Class Members will be given an opportunity to object to the terms of the Agreement
6 and/or the request for attorneys' fees and costs and to participate at the final approval hearing, in
7 accordance with the instructions set forth in the Settlement Notice. Class Members will be instructed
8 to only contact the Settlement Administrator and/or Class Counsel and not the Court. Class
9 Members who do not opt out will automatically receive an Individual Settlement Payment. This
10 notice program was designed to meaningfully reach the Class Members and advises them of all
11 pertinent information concerning the Settlement. The mailing and distribution of the Settlement
12 Notice satisfies the requirements of due process, is the best notice practicable under the
13 circumstances, and constitutes due and sufficient notice to all persons entitled thereto. The
14 Settlement Notice provides information on the terms and provisions of the Settlement; the benefits
15 that the Settlement provides for Class Members; the date, time, and place of the final settlement
16 approval hearing; and the procedure and deadline for submitting comments, objections, and requests
17 for exclusion. The Settlement Notice complies with Rules of Court 3.766 and 3.769(f). (Decl. Zakay
18 at ¶ 32.)

19 VII. CONCLUSION

20 Plaintiff respectfully requests that the Court preliminarily approve the proposed Settlement
21 and sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the
22 final fairness hearing for a date that is at least one hundred twenty (120) days after the date of
23 Preliminary Approval.

24 DATED: November 7, 2022

ZAKAY LAW GROUP, APLC

26 By. 
27 Shani O. Zakay
28 Attorney for Plaintiffs