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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF ALAMEDA**

DANIELA ARBELAEZ ACEVEDO and  
MYRELLA THOMAS, as individuals, and on  
behalf of themselves and on behalf of all  
persons similarly situated,

Plaintiffs,

vs.

ACES 2020 I, LLC, a Limited Liability  
Company; and DOES 2 through 50, inclusive,  
Defendants.

CASE NO.: **24CV061880**

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

Hearing Date: December 12, 2024  
Hearing Time: 2:30 p.m.  
**Reservation ID: 139417801892**

Judge: Hon. Victoria Kolakowski  
Dept.: 518

Action Filed: January 30, 2024  
Trial Date: Not set

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1     **I.       INTRODUCTION**

2             Plaintiffs Daniela Arbelaez Acevedo and Myrella Thomas (“Plaintiffs”) respectfully submit this  
3 memorandum in support of the unopposed motion for preliminary approval of the proposed class action  
4 settlement with Defendant ACES 2020, LLC, doing business in California as ACES 2020 I, LLC  
5 (“Defendant”), and seek entry of an order: (1) preliminarily approving the proposed settlement of this  
6 class action with Defendant; (2) for settlement purposes only, conditionally certifying the Class, which  
7 is comprised of “all individuals who were employed by Defendant and classified as a non-exempt  
8 employee in the State of California at any time during the Class Period, except any named plaintiff in  
9 the matter Allen v. ACES 2020 I, LLC et. al., Superior Court for the County of Contra Costa, Case No.  
10 C23-00916”; (3) provisionally appointing Plaintiffs as the representatives of the Class; (4) provisionally  
11 appointing Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit Bhowmik of Blumenthal  
12 Nordrehaug Bhowmik De Blouw LLP, Zakay Law Group, APLC, JCL Law Firm, APC, and Ferraro  
13 Vega Employment Lawyers, Inc. as Class Counsel; (5) approving the form and method for providing  
14 class-wide notice; (6) directing that notice of the proposed settlement be given to the class; (7)  
15 appointing ILYM Group, Inc. as Administrator, and (8) scheduling a final approval hearing date,  
16 proposed for April 24, 2025, which is at least 120 days from preliminary approval, to consider  
17 Plaintiffs’ motion for final approval of the settlement and for approval of attorneys’ fees and expenses.  
18 Plaintiffs and Defendants (collectively the “Parties”) have reached a full and final settlement of the  
19 above-captioned action, which is embodied in the Class Action and PAGA Settlement Agreement  
20 (“Agreement”) filed concurrently with the Court.<sup>1</sup> A copy of the fully executed Agreement is attached  
21 as Exhibit #1 to the Declaration of Kyle Nordrehaug (“Decl. Nordrehaug”), served and filed herewith.  
22 The form of the Agreement is based upon the Los Angeles County Superior Court model form for a  
23 class and PAGA settlement.

24             As consideration for this Settlement, the non-reversionary Gross Settlement Amount of One  
25 Million Six Hundred Fifty Thousand Dollars (\$1,650,000) (the “Gross Settlement Amount”) is to be  
26 paid by Defendant, as set forth in the Agreement, unless the Escalator Clause described in Section 9 of  
27

28             <sup>1</sup> Capitalized terms shall have the same meaning as defined in the Agreement.

the Agreement requires an increase in the Gross Settlement Amount based on Workweek calculations. The Gross Settlement Amount will settle all issues pending in the Action between the Parties and will be made in full and final settlement of the Released Class Claims in exchange for the payments to Participating Class Members from the Net Settlement Amount, and includes (a) the costs of administration of the settlement, (b) all attorneys' fees and costs, (c) Class Representative Service Payments, and (d) the PAGA Penalties payment allocated 75% to the LWDA and 25% to the Aggrieved Employees. (Agreement at ¶ 1.22.) Decl. Nordrehaug at ¶3. The following is a table of the key financial terms of the Settlement and the proposed deductions:

**\$1,650,000 (Gross Settlement Amount)**

- \$20,000 (Plaintiffs' proposed service awards - not to exceed \$10,000 each)
- \$45,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- \$550,000 (Class Counsel Fees Payment - not to exceed 1/3 of settlement)
- \$33,000 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
- \$43,000 (Administration Expenses Payment - not to exceed amount)

**\$959,000 (Net Settlement Amount)**

Based upon 7,539 Class Members who collectively worked 99,000 Workweeks (Agreement at ¶ 4.1), the Gross Settlement Amount provides an average value of \$218 per Class Member and \$16 per Workweek and after deductions the Net Settlement Amount provides an average recovery of \$127.20 per Class Member and a recovery of \$9.68 per Workweek. Decl. Nordrehaug at ¶6.

On July 18, 2024, the Parties participated in an all-day mediation session presided over by Louis Marlin, a respected and experienced mediator of wage and hour class actions. Following the mediation, the Parties agreed on the basic terms of a settlement pursuant to a mediator's proposal which was memorialized in the form of a Memorandum of Understanding. Decl. Nordrehaug at ¶5. The Settlement is fair, reasonable and adequate, and should be preliminarily approved because there is a substantial monetary payment, and there are significant litigation and class-certification risks. Therefore, 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 Six Hundred Fifty Thousand Dollars (\$1,650,000), unless there is an increase due to the escalator provision in paragraph 9 of the Agreement.

(Agreement at ¶ 1.22.) Under the Settlement, the Gross Settlement Amount consists of the following elements: (1) payment of the Individual Class Payments to the Participating Class Members; (2) Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (3) Administration Expenses Payment; (4) the Class Representative Service Payments to the Plaintiffs; and (5) the PAGA Penalties payment. (Agreement at ¶ 1.22.) The Gross Settlement Amount does not include Defendant's share of payroll taxes. (Agreement at ¶ 3.1.) The Gross Settlement Amount shall be all-in with no reversion to Defendants. (Agreement at ¶ 3.1.) Decl. Nordrehaug at ¶15.

The Agreement contains appropriate terms for a class settlement. (See Agreement at ¶¶ 1.28, 3.2, 4.3, 5.1.) The proposed Class Notice also provides the required protections for the Class to opt out, object or dispute their weeks worked. (See Agreement at ¶¶ 8.5, 8.6, 8.7, and Exhibit A.) The additional details of the Settlement are addressed in the Decl. Nordrehaug at ¶¶ 16-22. As set forth in the accompanying proof of service, the LWDA has been served with this motion and the Agreement.

### **III. CASE BACKGROUND**

The description of the case and claims, along with the procedural history is set forth in the Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and the exchange of documents and information in connection with the Action over nearly two years which permitted Class Counsel to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and 14. The Parties participated in mediation on July 18, 2024 with Louis Marlin, which after arms' length negotiations during the mediation, resulted in this Settlement. Decl. Nordrehaug, ¶12.

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

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

Preliminary approval is the first of three steps that comprise the approval procedure for

1 settlements of class actions. The second step is the dissemination of notice of the settlement to all class  
2 members. The third step is a final settlement approval hearing, at which evidence and argument  
3 concerning the fairness, adequacy, and reasonableness of the settlement may be presented, and class  
4 members may be heard regarding the settlement. *See Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,  
5 1801 (1996); *Manual for Complex Litigation, Second* §30.44 (1993); Cal. Rules of Court, rule 3.769.

6 The primary question presented on an application for preliminary approval of a proposed class  
7 action settlement is whether the proposed settlement is “within the range of possible approval.” *Manual*  
8 *for Complex Litigation, Second* §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir.  
9 1982).<sup>2</sup> There is “a presumption of fairness . . . where . . . [a] settlement is reached through arms-length  
10 bargaining.” *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 245 (2001) (citation omitted); see  
11 also *Cho v. Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th 734, 742-45 (2009) (upholding  
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.’”) However, the ultimate question of whether the proposed  
15 settlement is fair, reasonable and adequate is made after notice of the settlement is given to the class  
16 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  
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26 <sup>2</sup> 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).

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 such  
6 as these. *Officers for Justice*, 688 F.2d at 625. As a result, courts hold that the recommendation of  
7 counsel is entitled to significant weight. *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D.  
8 523, 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 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  
27 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 wage  
3 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 Louis Marlin, a respected and  
10 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation  
11 for the mediation, Defendant provided Class Counsel with payroll and employment data and other  
12 information regarding the Class Members, various internal documents, and other compensation and  
13 employment-related materials. Class Counsel analyzed the data with the assistance of damages expert  
14 Berger Consulting and prepared and submitted a mediation brief to the mediator. The final settlement  
15 terms were negotiated and set forth in the Agreement now presented for this Court's approval. Decl.  
16 Nordrehaug at ¶ 5. Importantly, Plaintiffs and Class Counsel believe that this Settlement is fair,  
17 reasonable and adequate.

18 Class Counsel has conducted an investigation into the facts of the class action. Class Counsel  
19 engaged in a thorough review and analysis of the relevant documents and data with the assistance of  
20 an expert. Based on the foregoing data and their own independent investigation, evaluation and  
21 experience, Class Counsel believes that the settlement with Defendants on the terms set forth in the  
22 Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known  
23 facts and circumstances, including the risk of significant delay, defenses asserted by Defendants, and  
24 potential appellate issues. Decl. Nordrehaug at ¶ 14. Plaintiffs and Class Counsel recognize the  
25 expense and length of continuing to litigate and trying this Action against Defendant through possible  
26 appeals which could take several years. Plaintiffs and Class Counsel have determined that the  
27 Settlement set forth in the Agreement is in the best interest of the Class Members. Decl. Nordrehaug,  
28

¶ 23.

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 System Sec. Litig.*, 720 F. Supp. at 1392.

**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 7,539 Class Members who collectively worked 99,000 Workweeks (Agreement at ¶ 4.1), the Gross Settlement Amount provides an average value of \$218 per Class Member and \$16 per Workweek and after deductions the Net Settlement Amount provides an average recovery of \$127.20 per Class Member and a recovery of \$9.68 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, Plaintiffs’ 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 \$556,004 for alleged reporting time wages, \$4,800,661 for the alleged unpaid wages due to off-the-clock work (based on 1 hour per workweek), \$14,624 for the alleged unpaid wages due to the regular rate miscalculation applicable to meal premiums and sick pay, \$1,876,377 for alleged meal period damages based upon a 51.8% potential violation rate for shifts observed in the time records and after deducting the meal premiums (\$11,199) actually paid by Defendants, \$3,201,245 for alleged rest period damages based upon the same potential 50% violation rate observed for meal periods, \$1,530,300 for alleged unreimbursed business expenses at \$50 per month. Decl. Nordrehaug, ¶6. As a result, the total damage valuation was calculated that Defendants were subject to a maximum damage claim in the amount of \$11,979,211. As to potential penalties, Plaintiffs calculated that potential waiting time penalties were

1 a maximum of \$16,960,362, and potential maximum wage statement penalties were \$5,775,450.<sup>3</sup>  
2 Defendant vigorously disputed Plaintiffs' calculations and exposure theories. See Decl. Nordrehaug at  
3 ¶6 for additional details as to the valuation of the claims.

4 Consequently, the Gross Settlement Amount of \$1,650,000 represents more than 13% of the  
5 maximum value of the alleged damages at issue in this case at the time this Settlement was negotiated.<sup>4</sup>  
6 Importantly, the recent decision that good faith belief of compliance by the employer in *Naranjo v.*  
7 *Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065 (2024), could completely negate the claims for  
8 waiting time and wage statement penalties, even if wages were owed to the Class. The above maximum  
9 calculations should then be adjusted in consideration for both the risk of class certification and the risk  
10 of establishing class-wide liability on all claims. Given the amount of the settlement as compared to  
11 the potential value of claims in this case and the defenses asserted by Defendants, this settlement is fair  
12 and reasonable.<sup>5</sup> Clearly, the goal of this litigation has been met. Decl. Nordrehaug, ¶6.

13 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*  
14

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15 <sup>3</sup> While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and  
16 226, at mediation Plaintiffs recognized that these claims were subject to additional, separate defenses  
17 asserted by Defendants, including, a good faith dispute defense as to whether any premium wages for  
18 meal or rest periods or other wages were owed given Defendant's position that Plaintiffs and Class  
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  
21 as to whether and when the wages were due.").

22 <sup>4</sup> Because the PAGA claim is not a class claim and primarily is paid to the State of California,  
23 Plaintiffs have not included the PAGA claim in this discussion of the value of the class claims. The  
24 PAGA claim is addressed in the Decl. Nordrehaug at ¶33.

25 <sup>5</sup> See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a  
26 settlement where the settlement amount constituted approximately 25% of the estimated overtime  
27 damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at \*12  
28 (N.D. Cal. 2015) (granting final approval where "the proposed Total Settlement Amount represents  
approximately 10% of what class might have been awarded had they succeeded at trial."); *Dunleavy v.*  
*Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000) (affirming approval of  
a class settlement which represented "roughly one-sixth of the potential recovery".) See also *Viceral v.*  
*Mistras Grp., Inc.*, 2016 WL 5907869 (N.D. Cal. 2016) (approving wage and hour class action  
settlement amounting to 8.1% of full value); *Ma v. Covidien Holding, Inc.*, 2014 WL 2472316, (C.D.  
Cal. 2014) (approving wage and hour class action settlement worth "somewhere between 9% and 18%"  
of maximum valuation).

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

22       There was also a significant risk that, if the Action was not settled, Plaintiffs would be unable  
23 to obtain a certified class and maintain the certified class through trial, and thereby not recover on behalf  
24 of any employees other than themselves. At the time of the mediation, Defendant forcefully opposed  
25 the propriety of class certification, arguing that individual issues precluded class certification. Further,  
26 as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59  
27 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class-wide recovery even where the  
28

1 class has been certified. While other cases have approved class certification in wage and hour claims,  
2 class certification in this action was hotly disputed and the maintenance of a certified class through trial  
3 was by no means a foregone conclusion. Decl. Nordrehaug, ¶ 25.

4 After arm's length negotiations between experienced and informed counsel, the Parties  
5 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of  
6 \$750,000. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

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

13 2007 WL 221862, at \*4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458  
14 (9th Cir. 2000)).

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

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

22 Plaintiffs will apply to the Court for Class Representative Service Payments in consideration  
23 for their service and for the risks undertaken on behalf of the Class. (Agreement at ¶ 3.2(a).) Plaintiffs  
24 performed their duties admirably by working with Class Counsel over the course of litigation, and are  
25 giving a general release beyond the class release for this service award. The Declarations of the  
26 Plaintiffs are submitted herewith in support. Decl. Nordrehaug at ¶27. At this stage, the requested  
27 service award amounts are within the range of reasonableness for purposes of preliminary approval.  
28 See e.g. *Andrews v. Plains All Am. Pipeline L.P.*, 2022 U.S. Dist. LEXIS 172183, at \*11 (C.D. Cal.  
2022) (finding that the requested service awards of \$15,000 each are appropriate); *Reynolds v. Direct*  
*Flow Med., Inc.*, 2019 U.S. Dist. LEXIS 149865, at \*19 (N.D. Cal. 2019) (granting request for \$12,500

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

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

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

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

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

28 Plaintiffs contend that the proposed settlement meets all of the requirements for class

1 certification under California Code of Civil Procedure § 382 as demonstrated below, and therefore, the  
2 Court may appropriately approve the Class as defined in the Agreement. This Court should  
3 conditionally certify the Class for settlement purposes only, defined as follows:

4 All individuals who were employed by Defendant and classified as a non-exempt  
5 employee in the State of California at any time during the Class Period, except any  
6 named plaintiff in the matter Allen v. ACES 2020 I, LLC et. al., Superior Court for the  
County of Contra Costa, Case No. C23-00916.

7 (Agreement at ¶ 1.5.)

8 The Class Period is from January 1, 2022 to November 5, 2024. (Agreement at ¶ 1.13).

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

10 Plaintiffs seek certification of this Class for settlement purposes under California Code of Civil  
11 Procedure § 382. The California Supreme Court has summarized the standard for determining whether  
12 class certification is appropriate 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  
15 it is impracticable to bring them all before the court...” The party seeking certification  
16 has the burden to establish the existence of both an ascertainable class and a well-  
defined community of interest among class members. (*citations omitted*). The  
“community of interest” requirement embodies three factors: (1) predominant common  
questions of law or fact; (2) class representatives with claims or defenses typical of the  
class; and (3) class representatives who can adequately represent the class.

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

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

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

23 Plaintiffs bring this action on behalf of a Class of non-exempt employees of Defendant during  
24 the Class Period. Plaintiffs assert that all of these individuals are ascertainable because the class  
25 members can readily be determined through examination of Defendant’s files. Given that the Class  
26 consists of approximately 7,539 individuals, Plaintiffs maintain that numerosity is clearly satisfied. *See*  
27 *Bowles v. Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members); *Rose v. City of Hayward*, 126  
28

1 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.) Here, Plaintiffs  
2 assert that the 7,539 current and former employees that comprise the Class can be identified based on  
3 Defendant's records and are sufficiently numerous for class certification. Decl. Nordrehaug at ¶30.

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

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

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

16 Here, Plaintiffs contend that common questions of law and fact are present, specifically the  
17 common questions of whether Defendant's employment practices were lawful, whether Defendant  
18 failed to provide meal and rest periods to Class Members, whether Class members were lawfully  
19 compensated for all hours worked, whether Defendant miscalculated the regular rate when paying Class  
20 Members wages, whether Defendant failed to provide required expense reimbursement, and whether  
21 Class Members are entitled to damages and penalties as a result of these practices. Plaintiffs contend  
22 that certification of this Class is appropriate because Defendant allegedly engaged in uniform practices  
23 with respect to the Class Members. As a result, these common questions of liability could be answered  
24 on a class wide basis. Decl. Nordrehaug, ¶30.

25 **D. The Claims of the Plaintiffs Are Typical of the Class Claims**

26 The typicality requirement requires the Plaintiffs to demonstrate that the members of the class  
27 have the same or similar claims as the Plaintiffs. "The typicality requirement is met when the claims  
28

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

5 In this Action, Plaintiffs contend that the typicality requirement is fully satisfied. Plaintiffs, like  
6 every other member of the Class, were employed by Defendant as non-exempt employees, and, like  
7 every other member of the Class, were subject to the same employment practices. Plaintiffs, like every  
8 other member of the Class, also claim owed compensation as a result of the Defendant’s uniform  
9 company policies and practices. Thus, the claims of Plaintiffs and the members of the Class arise from  
10 the same course of conduct by Defendant, involve the same issues, and are based on the same legal  
11 theories. Decl. Nordrehaug at ¶30. Plaintiffs assert that the typicality requirement is met as to the  
12 common issues presented in this case.

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

14 Plaintiffs contend that the Class Members are adequately represented here because Plaintiffs and  
15 representing counsel (a) do not have any conflicts of interest with other class members, and (b) will  
16 prosecute the case vigorously on behalf of the class. *Hanlon*, 150 F.3d at 1020. This requirement is  
17 met here. First, Plaintiffs are well aware of their duties as the representatives of the Class and have  
18 actively participated in the prosecution of this case to date. Plaintiffs effectively communicated with  
19 Class Counsel, provided documents and information to Class Counsel, and participated in the  
20 investigation and resolution of the Action. The personal involvement of the Plaintiffs was essential to  
21 the prosecution of the Action and the monetary settlement reached. Second, Plaintiffs retained  
22 competent counsel who are experienced in employment class actions and who have no conflicts. Decl.  
23 Nordrehaug at ¶ 31; Declaration of Nicholas Ferraro at ¶¶ 2-14. Third, there is no antagonism between  
24 the interests of the Plaintiffs and those of the Class. Both the Plaintiffs and the Class Members seek  
25 monetary relief under the same set of facts and legal theories. Under such circumstances, there can be  
26 no conflicts of interest, and adequacy of representation is satisfied. *Reaves v. Ketoro, Inc.*, 2020 U.S.  
27 Dist. Lexis 167926, \*23 (C.D. Cal. 2020).

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

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

7           Absent class treatment, each individual plaintiff would present in separate, duplicative  
8 proceedings the same or essentially the same arguments and evidence, including expert  
9 testimony. The result would be a multiplicity of trials conducted at enormous expense  
10 to both the judicial system and the litigants.

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

12 Here, Plaintiffs contend that a class action is the superior mechanism for resolution of the class claims.

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

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

27           **VII.     CONCLUSION**

28           Plaintiff respectfully requests that the Court preliminarily approve the proposed settlement and  
sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the final

1 approval hearing for the proposed date of April 24, 2025.

2 Dated: November 14, 2024

**BLUMENTHAL NORDREHAUG BHOWMIK  
DE BLOUW LLP**

3 By: /s/ Kyle Nordrehaug  
4 Kyle R. Nordrehaug, Esq.  
5 Attorney for Plaintiffs  
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