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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

MANUEL FRANCO and ALFONSO
GUZMAN, on behalf of themselves, on
behalf of all persons similarly situated,
and on behalf of the State of California as
a private attorney general,

Plaintiffs,

vs.

STATES LOGISTICS SERVICES, INC.,
a California Corporation; and DOES 1
through 50, inclusive,

Defendants.

CASE NO.: **30-2022-01239095-CU-OE-CXC**

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

Hearing Date: November 8, 2024
Hearing Time: 1:30 p.m.

Judge: Hon. Lon Hurwitz
Dept.: CX103

Action Filed: July 6, 2021
Trial Date: Not set

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	DESCRIPTION OF THE SETTLEMENT.....	2
III.	CASE BACKGROUND.....	5
IV.	THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO GRANT PRELIMINARY APPROVAL	5
A.	The Role Of The Court In Preliminary Approval Of A Class Action Settlement	6
B.	Factors To Be Considered In Granting Preliminarily Approval	7
1.	The Settlement is the Product of Serious, Informed and Arm's Length Negotiations by Experienced Counsel	7
2.	The Settlement Has No "Obvious Deficiencies" and Falls Within the Range for Approval.....	9
3.	The Settlement Does Not Improperly Grant Preferential Treatment To Class Representatives or Segments Of The Class	12
4.	The Stage Of The Proceedings Are Sufficiently Advanced To Permit Preliminary Approval Of The Settlement	13
V.	THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES	14
A.	California Code of Civil Procedure §382	14
B.	The Proposed Class Is Ascertainable and Numerous	15
C.	Common Issues of Law and Fact Predominate.....	15
D.	The Claims of the Plaintiffs Are Typical of the Class Claims	16
E.	The Class Representation Fairly and Adequately Protected the Class	16
F.	The Superiority Requirement Is Met.....	17
VI.	THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE	18
VII.	CONCLUSION.....	19

TABLE OF AUTHORITIES

<u>Cases:</u>	<u>Page:</u>
<i>Andrews v. Plains All Am. Pipeline L.P.</i> , 2022 U.S. Dist. LEXIS 172183 (C.D. Cal. 2022)	13
<i>Bowles v. Superior Court</i> , 44 Cal.2d 574 (1955)	15
<i>Brinker v. Superior Court</i> , 53 Cal. 4th 1004 (2012)	11
<i>Cellphone Termination Fee Cases</i> , 180 Cal.App.4th 1110 (2009)	5
<i>Cho v. Seagate Tech. Holdings, Inc.</i> , 177 Cal. App. 4th 734 (2009)	6
<i>Dunk v. Ford Motor Co.</i> , 48 Cal.App.4th 1794 (1996)	5, 6, 8
<i>Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)</i> , 213 F.3d 454 (9 th Cir. 2000)	11, 12
<i>Duran v. U.S. Bank National Assn.</i> , 59 Cal. 4th 1 (2014)	12
<i>Frazier v. City of Richmond</i> , 184 Cal.App.3d 1491 (1986)	5
<i>Gautreaux v. Pierce</i> , 690 F.2d 616 (7 th Cir. 1982)	5
<i>Ghazaryan v. Diva Limousine, Ltd.</i> , 169 Cal. App. 4th 1524 (2008)	15
<i>Glass v. UBS Fin. Servs.</i> , 2007 U.S. Dist. LEXIS 8476 (N.D.Cal. 2007)	11, 12, 13
<i>Green v. Obledo</i> , 29 Cal.3d 126 (1981)	5
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9 th Cir. 1998)	11, 16
<i>In re Tableware Antitrust Litig.</i> , 484 F.Supp. 2d 1078 (N.D. Cal. 2007)	7
<i>In re Wash. Public Power Supply System Sec. Litig.</i> , 720 F. Supp. 1379 (D. Ariz. 1989)	9
<i>Kullar v. Foot Locker</i> , 168 Cal. App. 4th 116 (2008)	7, 8

1	<i>Linder v. Thrifty Oil Co.</i> ,	15
2	23 Cal. 4th 429 (2003)	
3	<i>Louie v. Kaiser Foundation Health Plan, Inc.</i> ,	13
4	2008 WL 4473183 (S.D.Cal. Oct. 06, 2008)	
5	<i>Ma v. Covidien Holding, Inc.</i> ,	11
6	2014 WL 2472316 (C.D. Cal. 2014).....	
7	<i>Mathein v. Pier 1 Imps. (U.S.), Inc.</i> ,	13
8	2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018).....	
9	<i>Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.</i> ,	6
10	221 F.R.D. 523 (C.D. Cal. 2004).....	
11	<i>Naranjo v. Spectrum Sec. Servs., Inc.</i> ,	10, 11
12	15 Cal. 5th 1056 (2024)	
13	<i>Nordstrom Comm'n Cases</i> ,	5
14	186 Cal. App. 4th 576 (2010)	
15	<i>Officers for Justice v. Civil Service Com'n, etc.</i> ,	5, 6
16	688 F.2d. 615 (9th Cir. 1982)	
17	<i>Reaves v. Ketoro, Inc.</i> ,	17
18	2020 U.S. Dist. Lexis 167926 (C.D. Cal. 2020).....	
19	<i>Reynolds v. Direct Flow Med., Inc.</i> ,	13
20	2019 U.S. Dist. LEXIS 149865 (N.D. Cal. 2019).....	
21	<i>Rose v. City of Hayward</i> ,	15
22	126 Cal.App.3d 926 (1981)	
23	<i>Sav-On Drug Stores, Inc. v. Superior Court</i> ,	14, 15, 17
24	34 Cal. 4th 319 (2004)	
25	<i>Sayaman v. Baxter Healthcare Corp.</i> ,	6
26	2010 U.S. Dist. LEXIS 151997 (C.D. Cal. 2010).....	
27	<i>Stovall-Gusman v. W.W. Granger, Inc.</i> ,	11
28	2015 U.S. Dist. LEXIS 78671 (N.D. Cal. 2015).....	
	<i>Tate v. Weyerhaeuser Co.</i> ,	16
	723 F.2d 598 (8th Cir. 1983)	
	<i>Valentino v. Carter-Wallace, Inc.</i> ,	17
	97 F.3d 1227 (9th Cir. 1996)	
	<i>Vasquez v. Superior Court</i> ,	5
	4 Cal.3d 800 (1971)	
	<i>Viceral v. Mistras Grp., Inc.</i> ,	11
	2016 WL 5907869 (N.D. Cal. 2016)	

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Wershba v. Apple Computer, Inc.,
91 Cal.App.4th 224 (2001) 6

Statutes, Rules and Regulations:

California Code of Civil Procedure §382 14

California Labor Code §2698 4

California Labor Code §2699 4

California Rules of Court, rule 3.766 18

California Rules of Court, rule 3.769 5, 18

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1 **I. INTRODUCTION**

2 Plaintiffs Manuel Franco and Alfonso Guzman (“Plaintiffs”) respectfully submits this
3 memorandum in support of the unopposed motion for preliminary approval of the proposed class action
4 settlement with Defendant States Logistics Services, Inc. (“Defendant”), and seeks entry of an order:
5 (1) preliminarily approving the proposed settlement of this class action with Defendant; (2) for
6 settlement purposes only, conditionally certifying the Class, which is comprised of “all individuals who
7 were employed by Defendant in the State of California and classified as a non-exempt employee at any
8 time during the Class Period”, which is May 2, 2020 to July 20, 2024; (3) provisionally appointing
9 Plaintiffs as the representatives of the Class; (4) provisionally appointing Norman B. Blumenthal, Kyle
10 R. Nordrehaug, Aparajit Bhowmik, Jeffrey S. Herman, Sergio J. Puche, Trevor G Moran of Blumenthal
11 Nordrehaug Bhowmik De Blouw LLP, Nazo Koulloukian of Koul Law Firm, and Sahag Majarian, II
12 of Law Offices of Sahag Majarian, II as Class Counsel; (5) approving the form and method for
13 providing class-wide notice; (6) directing that notice of the proposed settlement be given to the class;
14 (7) appointing ILYM Group, Inc. as Administrator; and (8) scheduling a final approval hearing date for
15 a date that is four months from preliminary approval to consider Plaintiffs’ motion for final approval
16 of the settlement and for approval of attorneys’ fees and expenses. Plaintiffs and Defendant
17 (collectively the “Parties”) have reached a full and final settlement of the above-captioned action
18 (“Action”), which is embodied in the Class Action and PAGA Settlement Agreement (“Agreement”)
19 filed concurrently with the Court.¹ A copy of the fully executed Agreement is attached as Exhibit #1
20 to the Declaration of Kyle Nordrehaug (“Decl. Nordrehaug”), served and filed herewith. The form of
21 the Agreement is based upon the Los Angeles County Superior Court model form for a class and PAGA
22 settlement.

23 As consideration for this Settlement, the Gross Settlement Amount is One Million One Hundred
24 Forty-Nine Thousand Five Hundred Dollars (\$1,149,500) (the “Gross Settlement Amount”) to be paid
25 by Defendant, as set forth in the Agreement. The Gross Settlement Amount will settle all issues
26 pending in the Action between the Parties and will be made in full and final settlement of the Released
27

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

1 Class Claims in exchange for the payments to Participating Class Members from the Net Settlement
2 Amount, and includes (a) the costs of administration of the settlement, (b) all attorneys' fees and costs,
3 (c) Class Representative Service Payments, and (d) the PAGA Penalties payment allocated 75% to the
4 LWDA and 25% to the Aggrieved Employees. (Agreement at ¶ 1.22.) The Gross Settlement Amount
5 does not include the employer's share of payroll taxes which will be separately paid by Defendant. (Id.)
6 The Settlement is all-in with no reversion to Defendant and no need to submit a claim form. (Id.) Decl.
7 Nordrehaug at ¶3. The following is a table of the key financial terms of the Settlement and the proposed
8 deductions:

9 **\$1,149,500** (Gross Settlement Amount)

- 10 - \$20,000 (Plaintiffs' proposed service awards not to exceed \$10,000 each)
- 11 - \$45,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- 12 - \$383,166.67 (Class Counsel Fees Payment - not to exceed 1/3 of settlement)
- 13 - \$25,000 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
- 14 - \$16,000 (Administration Expenses Payment - not to exceed amount)

15 **\$660,333.33** (Net Settlement Amount)

16 Based upon 1,392 Class Members who collectively worked 115,815 Workweeks, the Gross Settlement
17 Amount provides an average value of approximately \$825 per Class Member and \$9.92 per Workweek
18 and after deductions the Net Settlement Amount provides an average recovery of approximately
19 \$474.37 per Class Member and a recovery of \$5.70 per Workweek. Decl. Nordrehaug at ¶6.

20 On May 14, 2024, the Parties participated in an all-day mediation session presided over by Hon.
21 William C. Pate (Ret.), a respected jurist and experienced mediator of wage and hour class actions.
22 Following the mediation, the Parties agreed on the basic terms of a settlement pursuant to a mediator's
23 proposal which was memorialized in the form of a Memorandum of Understanding. Decl. Nordrehaug
24 at ¶5. The Settlement is fair, reasonable and adequate, and should be preliminarily approved because
25 there is a substantial monetary payment, and there are significant litigation and class-certification risks.
26 Therefore, Plaintiffs respectfully request that this Court grant preliminary approval of the Agreement
27 and enter the proposed order submitted herewith.

28 **II. DESCRIPTION OF THE SETTLEMENT**

The Gross Settlement Amount is One Million One Hundred Forty-Nine Thousand Five Hundred
Dollars (\$1,149,500). (Agreement at ¶ 1.22.) Under the Settlement, the Gross Settlement Amount

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

7 Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary
8 to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later
9 than 14 calendar days after the Effective Date. (Agreement at ¶ 4.3.) The distribution of Individual
10 Class Payments to Participating Class Members along with the other Court-approved distributions shall
11 be made by the Administrator within fourteen (14) days after Defendant funds the Gross Settlement
12 Amount. (Agreement at ¶ 5.1.) Decl. Nordrehaug at ¶16.

13 The amount remaining in the Gross Settlement Amount after the deduction of Court-approved
14 amounts for Individual PAGA Payments, the LWDA PAGA Payment, the Class Representative Service
15 Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the
16 Administration Expenses Payment (called the "Net Settlement Amount") shall be allocated to Class
17 Members as their Individual Class Payments. (Agreement at ¶¶ 1.27 and 3.2.) From the Net Settlement
18 Amount, the Individual Class Payment for each Participating Class Member will be calculated by (a)
19 dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating
20 Class Members during the Class Period and (b) multiplying the result by each Participating Class
21 Member's Workweeks. (Agreement at ¶ 3.2(e).) Workweeks will be based on Defendant's records,
22 however, Class Members can challenge their number of Workweeks. Decl. Nordrehaug at ¶17.

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

1 subject to the release of the Released PAGA Claims regardless of their request for exclusion.
2 (Agreement at ¶¶ 6.3 and 8.5(d).) Finally, the Class Notice will advise the Class Members of their right
3 to object to the Settlement and/or dispute their Workweeks. (Agreement at ¶¶ 8.6 and 8.7, Ex. A.)
4 Decl. Nordrehaug at ¶18.

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

10 Subject to Court approval, the Parties have agreed on ILYM Group, Inc. to administer the
11 settlement in this action ("Administrator"). (Agreement at ¶ 1.2.) The Administrator will be paid for
12 settlement administration in an amount not to exceed \$16,000. (Agreement at ¶ 3.2(c).) Decl.
13 Nordrehaug at ¶20.

14 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
15 to exceed one-third of the Gross Settlement Amount, as the Class Counsel Fees Payment. (Agreement
16 at ¶ 3.2(b).) Class Counsel will also be allowed to apply separately for an award of Class Counsel
17 Litigation Expenses Payment in an amount not to exceed \$45,000. (Agreement at ¶ 3.2(b).) Subject
18 to Court approval, the Agreement provides for a payment of no more than \$10,000 each to the Plaintiffs
19 as their Class Representative Service Payments. (Agreement at ¶ 3.2(a).) Decl. Nordrehaug at ¶21.

20 Subject to Court approval, the PAGA Penalties will be paid from the Gross Settlement Amount
21 for PAGA penalties under the California Private Attorneys General Act, Cal. Labor Code Section 2698,
22 *et seq.* ("PAGA"). The PAGA Penalties are \$25,000. (Agreement at ¶ 3.2(d).) Pursuant to the express
23 requirements of Labor Code § 2699(i), the PAGA Payment shall be allocated as follows: 75% shall be
24 allocated to the Labor Workforce Development Agency ("LWDA") as its share of the civil penalties and
25 25% allocated to the Individual PAGA Payments to be distributed to the Aggrieved Employees based
26 on the number of their respective PAGA Pay Periods. (Agreement at ¶ 3.2(d).) As set forth in the
27 accompany proof of service, the LWDA has been served with this motion and the Agreement. Decl.
28

1 Nordrehaug at ¶22.

2 **III. CASE BACKGROUND**

3 The description of the case and claims, along with the procedural history is set forth in the
4 Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and the
5 exchange of documents and information in connection with the Action over one year which permitted
6 Class Counsel to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and 14. The
7 Parties participated in mediation on May 14, 2024 with Hon. William C. Pate (Ret.), which after arms'
8 length negotiations, resulted in this Settlement. Decl. Nordrehaug, ¶12.

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

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

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

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

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

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

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

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

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

26 _____
27 urged to follow the procedures prescribed in Rule 23 of the Federal Rules of Civil Procedure for
28 conducting class actions.” *Frazier v. City of Richmond*, 184 Cal. App.3d 1491, 1499 (1986), citing
Green v. Obledo, 29 Cal.3d 126, 145-146 (1981).

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

B. Factors To Be Considered In Granting Preliminary Approval

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

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

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

³ The release applicable to the Class is appropriately tethered to allegations in the Action and the "Released Class Claims" are narrowly defined as "all claims that were alleged, or reasonably could have been alleged, based on facts stated in the Operative Complaint which occurred during the Class Period during employment in a non-exempt position in California, which includes claims for failure to pay minimum wages, failure to pay overtime wages, failure to provide required meal periods, failure to provide required rest periods, failure to provide accurate itemized wage statements, failure to reimburse employees for required business expenses, failure to provide wages when due, unfair competition based on these claims, and derivative penalties. Except as expressly set forth in this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, discrimination, unemployment insurance, disability, social security, workers' compensation, Plaintiffs' respective non-wage and hour individual claims that are subject to a separate release, or Class claims based on facts occurring outside

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; Declaration of Nazo Koulloukian at ¶¶ 11-
5 15; Declaration of Sahag Majarian at ¶¶ 2-4. The view of qualified and well-informed counsel that a
6 class action settlement is fair, adequate, and reasonable is entitled to significant weight. *See Kullar v.*
7 *Foot Locker*, 168 Cal. App. 4th 116, 133 (2008) (the trial court "undoubtedly should continue to place
8 reliance on the competence and integrity of counsel, the involvement of a qualified mediator, and the
9 paucity of objectors to the settlement."); *Dunk*, 48 Cal. App. 4th at 1802.

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

19 Class Counsel has conducted an investigation into the facts of the class action. Informal
20 discovery was performed along with the production of hundreds of pages of relevant documents. Class
21 Counsel engaged in a thorough review and analysis of the relevant documents and data with the
22 assistance of an expert. Accordingly, the agreement to settle did not occur until Class Counsel
23 possessed sufficient information to make an informed judgment regarding the likelihood of success on
24 the merits and the results that could be obtained through further litigation. In addition, Class Counsel
25 previously negotiated settlements with other employers in actions involving nearly identical issues and
26 analogous defenses. Based on the foregoing data and their own independent investigation, evaluation
27

28 the Class Period" (Agreement at ¶¶ 1.38 and 6.2.)

1 and experience, Class Counsel believes that the settlement with Defendant on the terms set forth in the
2 Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known
3 facts and circumstances, including the risk of significant delay, defenses asserted by Defendant, and
4 potential appellate issues. Decl. Nordrehaug at ¶ 14.

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

12 Here, there can be no dispute that the litigation has been hard-fought with aggressive and
13 capable advocacy on both sides. The Parties were represented by experienced counsel who zealously
14 advocated their positions. Accordingly, “[t]here is likewise every reason to conclude that settlement
15 negotiations were vigorously conducted at arms’ length and without any suggestion of undue influence.”
16 *In re Wash. Public Power Supply System Sec. Litig.*, 720 F. Supp. 1379, 1392 (D. Ariz. 1989).

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

19 The proposed Settlement herein has no "obvious deficiencies" and is well within the range of
20 possible approval. All Class Members will receive an opportunity to participate in the Settlement and
21 receive payment according to the same formula. (Agreement at ¶ 3.2(e).) Based upon 1,392 Class
22 Members who collectively worked 115,815 Workweeks, the Gross Settlement Amount provides an
23 average value of approximately \$825 per Class Member and \$9.92 per Workweek and after deductions
24 the Net Settlement Amount provides an average recovery of approximately \$474.37 per Class Member
25 and a recovery of \$5.70 per Workweek. Decl. Nordrehaug, ¶6.

26 The calculations to compensate for the amount due for the Class at the time of the mediation
27 were calculated by Berger Consulting, Plaintiffs’ damages expert. As to the Class whose claims are at
28 issue, Plaintiffs used the expert to analyze the data and determine the potential unpaid wages for the

employees. The maximum potential damages as calculated by Plaintiffs' expert were calculated to be \$85,218 for the alleged unpaid wages due to rounding, \$161,395 for the alleged unpaid overtime wages, \$3,247,819 for the alleged unpaid wages due to off-the-clock work based upon 1 hour per week, \$2,453 for the alleged unpaid overtime due to miscalculation of the regular rate, \$6,417 in alleged underpaid meal premiums and sick pay due to the miscalculation of the regular rate, \$877,072 for alleged meal period damages based upon a 12.4% potential violation rate observed in the time records for shifts worked and after deducting meal premiums already paid by Defendant, \$1,906,795 for alleged rest period damages based upon a 19.6% potential violation rate observed in the time records for rest periods., and \$132,995 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 \$6,420,136. As to potential penalties, Plaintiff calculated that potential waiting time penalties were a maximum of between \$2,706,529 and \$3,722,905, depending on the predicate violation, and potential wage statement penalties were \$5,032,000. Defendant vigorously disputed Plaintiffs' calculations and exposure theories. Decl. Nordrehaug, ¶6.

Consequently, the Gross Settlement Amount of \$1,149,500 represents more than 17.9% of the maximum value of the alleged damages at issue in this case at the time this Settlement was negotiated.⁴ Importantly, the recent decision that good faith belief of compliance by the employer in *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065 (2024), could completely negate the claims for waiting time and wage statement penalties, even if wages were owed to the Class. The above maximum calculations should then be adjusted in consideration for both the risk of class certification and the risk of establishing class-wide liability on all claims. Given the amount of the settlement as compared to the potential value of claims in this case and the defenses asserted by Defendant, this settlement is fair

⁴ Because the PAGA claim is not a class claim and primarily is paid to the State of California, Plaintiff has 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.

1 and reasonable.⁵ Clearly, the goal of this litigation has been met. Decl. Nordrehaug, ¶6.

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

22 ⁵ See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a
23 settlement where the settlement amount constituted approximately 25% of the estimated overtime
24 damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12
25 (N.D. Cal. 2015) (granting final approval where "the proposed Total Settlement Amount represents
26 approximately 10% of what class might have been awarded had they succeeded at trial."); *Dunleavy v.*
27 *Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000) (affirming approval of
28 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 maintains these defenses have merit and therefore present a serious risk to recovery by the Class. Decl.
2 Nordrehaug, ¶ 24.

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

12 After arm's length negotiations between experienced and informed counsel, the Parties
13 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of
14 \$1,149,500. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

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

21 2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
22 (9th Cir. 2000)).

23 **3. The Settlement Does Not Improperly Grant Preferential Treatment To** 24 **Class Representatives or Segments Of The Class**

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

Plaintiffs will apply to the Court for a Class Representative Service Payment in consideration

1 for their service and for the risks undertaken on behalf of the Class. (Agreement at ¶ 3.2(a).) Plaintiffs
2 performed their duties admirably by working with Class Counsel for two years. The Declarations of
3 the Plaintiffs are submitted herewith in support. Decl. Nordrehaug at ¶27. At this stage, the requested
4 service award amount not to exceed \$10,000 is well within the accepted range of awards for purposes
5 of preliminary approval. *See e.g. Andrews v. Plains All Am. Pipeline L.P.*, 2022 U.S. Dist. LEXIS
6 172183, at *11 (C.D. Cal. 2022) (the requested service awards of \$15,000 each are appropriate);
7 *Reynolds v. Direct Flow Med., Inc.*, 2019 U.S. Dist. LEXIS 149865, at *19 (N.D. Cal. 2019) (granting
8 request for \$12,500 service award); *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386
9 (E.D. Cal. 2018) (awarding \$12,500); *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008 WL 4473183,
10 *7 (S.D. Cal. 2008) (awarding \$25,000 service award to each of six plaintiffs); *Glass v. UBS Fin.*
11 *Servs.*, 2007 WL 221862, *16-17 (N.D. Cal. 2007) (awarding \$25,000 service award in overtime class
12 action). As explained in *Glass*, service awards are routinely awarded to class representatives to
13 compensate the employees for the time and effort expended on the case, for the risk of litigation, for
14 the fear of suing an employer and retaliation there from, and to serve as an incentive to vindicate the
15 statutory rights of all employees. 2007 WL 221862 at *16-17.

16 **4. The Stage Of The Proceedings Are Sufficiently Advanced To Permit**
17 **Preliminary Approval Of The Settlement**

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

1 Based on the foregoing data and their own independent investigation and evaluation, Class
2 Counsel is of the opinion that the Settlement with Defendant for the consideration and on the terms set
3 forth in the Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light
4 of all known facts and circumstances, including the risk of significant delay, defenses asserted by
5 Defendant, and numerous potential appellate issues. There can be no doubt that Counsel for both
6 Parties possessed sufficient information to make an informed judgment regarding the likelihood of
7 success on the merits and the results that could be obtained through further litigation. Decl. Nordrehaug
8 at ¶29.

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

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

14 All individuals who were employed by Defendant in the State of California and
15 classified as a non-exempt employee at any time during the Class Period.

16 (Agreement at ¶ 1.4.)

17 The Class Period is May 2, 2020 to July 20, 2024. (Agreement at ¶ 1.12.)

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

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

22 Code of Civil Procedure Section 382 authorizes class actions “when the question is one
23 of a common or general interest, of many persons, or when the parties are numerous, and
24 it is impracticable to bring them all before the court...” The party seeking certification
25 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.

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

27 While Defendant reserves all rights to dispute that the Plaintiffs can satisfy these requirements,
28

1 the Parties agree that Defendant will not dispute that these requirements may be satisfied in this case
2 for purposes of settlement only and therefore, the proposed Class should be certified for purposes of
3 settlement only. (Agreement at ¶ 2.15.)

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

5 Plaintiffs bring this Action on behalf of a Class of non-exempt employees of Defendant during
6 the Class Period. Plaintiffs assert that all of these individuals are ascertainable because the class
7 members can readily be determined through examination of Defendant's files. Given that the Class
8 consists of approximately 1,392 members, Plaintiffs maintain that numerosity is clearly satisfied. *See*
9 *Bowles v. Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose*
10 *v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity
11 requirement.) Here, Plaintiffs assert that the 1,392 current and former employees that comprise the
12 Class can be identified based on Defendant's records and are sufficiently numerous for class
13 certification. Decl. Nordrehaug at ¶30.

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

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

20 Commonality exists if there is a predominant common legal question regarding how an
21 employer's policies impact its employees. *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524,
22 1536 (2008) ("[T]he common legal question remains the overall impact of Diva's policies on its
23 drivers.") Whether the plaintiff is likely to prevail on their theory of recovery is irrelevant at the
24 certification stage since the question is "essentially a procedural one that does not ask whether an action
25 is legally or factually meritorious." *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2003).

26 Here, Plaintiffs contend that common questions of law and fact are present, specifically the
27 common questions of whether Defendant's employment practices were lawful, whether Defendant
28

1 failed to provide meal and rest periods to Class Members, whether Defendant miscalculated the regular
2 rate when paying wages to the Class, whether Class Members were lawfully compensated for all hours
3 worked, whether Defendant failed to provide required expense reimbursement, and whether Class
4 Members are entitled to damages and penalties as a result of these practices. Plaintiffs contend that
5 certification of this Class is appropriate because Defendant allegedly engaged in uniform practices with
6 respect to the Class Members. As a result, these common questions of liability could be answered on
7 a class wide basis. Decl. Nordrehaug, ¶30. Defendant disputes that common questions predominate
8 but will not oppose such a finding for purposes of this Settlement only.

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

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

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

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

26 Plaintiffs contend that the Class Members are adequately represented here because Plaintiffs and
27 representing counsel (a) do not have any conflicts of interest with other class members, and (b) will
28

1 prosecute the case vigorously on behalf of the class. *Hanlon*, 150 F.3d at 1020. This requirement is
2 met here. First, Plaintiffs are well aware of their duties as the representatives of the Class and have
3 actively participated in the prosecution of this case to date. Plaintiffs effectively communicated with
4 Class Counsel, provided documents and information to Class Counsel, and participated in the
5 investigation and resolution of the class claims. The personal involvement of the Plaintiffs was
6 essential to the prosecution of the claims and the monetary settlement reached. Second, Plaintiffs
7 retained competent counsel who are experienced in employment class actions and who have no
8 conflicts. Decl. Nordrehaug at ¶ 31; Declaration of Nazo Koulloukian at ¶¶ 11-15; Declaration of Sahag
9 Majarian at ¶¶ 2-4. Third, there is no antagonism between the interests of the Plaintiffs and those of
10 the Class. Both the Plaintiffs and the Class Members seek monetary relief under the same set of facts
11 and legal theories. Under such circumstances, there can be no conflicts of interest, and adequacy of
12 representation is satisfied. *Reaves v. Ketoro, Inc.*, 2020 U.S. Dist. Lexis 167926, *23 (C.D. Cal. 2020).
13 Defendant disputes that the adequacy requirement is satisfied but will not oppose such a finding for
14 purposes of 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.

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

26 Here, Plaintiffs contend that a class action is the superior mechanism for resolution of the claims
27 as pled by the Plaintiffs. While Defendant disputes that class treatment is superior, Defendant does not
28 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. The Parties have agreed
3 upon procedures by which the Class Members will be provided with written notice of the Settlement
4 similar to that approved and utilized in hundreds of class action settlements. In accordance with the
5 Agreement, Defendant will provide to the Administrator a confidential electronic spreadsheet
6 containing the Class Data. (Agreement at ¶ 4.2.) Within 14 days after receiving the Class Data, the
7 Administrator will mail the Class Notice Packet to all Class Members via first-class U.S. Mail using
8 the most current mailing address information available. (Agreement at ¶ 8.4(b).) The Class Notice
9 Packet will include a Request for Exclusion form and a Dispute form in the mailing. (Agreement at ¶
10 1.11.) The Class Notice Packet will include a Spanish translation. (Agreement at ¶1.10.)

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

19 The Class Notice will state that the Class Members shall have sixty (60) days from the date that
20 the Class Notice is mailed to them (the “Response Deadline”) to request exclusion (opt-out) or to
21 submit a written objection. (Agreement at ¶¶ 1.42, 8.5, 8.7.) Class Members shall be given the
22 opportunity to object to the Settlement and/or requests for attorneys’ fees and expenses and to appear
23 at the Final Approval Hearing. (Agreement at ¶ 8.7.) Class Members who do not submit a timely and
24 proper request to opt-out will automatically receive a payment of their Individual Class Payment. This
25 notice program was designed to meaningfully reach the Class Members and it advises them of all
26 pertinent information concerning the Settlement. Decl. Nordrehaug at ¶32. The mailing and
27
28

1 distribution of the Class Notice satisfies the requirements of due process and is the best notice
2 practicable under the circumstances and complies with Rules of Court 3.766 and 3.769(f).

3 **VII. CONCLUSION**

4 Plaintiff respectfully requests that the Court preliminarily approve the proposed settlement and
5 sign the proposed Preliminary Approval Order, and schedule the final approval hearing for a date that
6 is at least one hundred twenty (120) days from the date of Preliminary Approval.

7
8 Dated: October 16, 2024

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