

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 ISMAEL ORTEGA, KRISINDA
11 WOLFE, DORIS WILLIAMS-
12 JENKINS, and LILIA SILVA,
13 individuals, on behalf of
14 themselves and all persons
15 similarly situated,

16 Plaintiffs,

17 v.

18 LOYAL SOURCE
19 GOVERNMENT SERVICES
20 LLC, a Limited Liability
21 Company; and Does 1 through
22 50, Inclusive,

23 Defendants.

Case No. 3:20-cv-0879-LAB-NLS

ORDER GRANTING:

- 1) **MOTION FOR FINAL
APPROVAL OF CLASS
SETTLEMENT [Dkt. 33]; and**
2) **MOTION FOR ATTORNEY
FEES, COSTS, AND SERVICE
AWARDS [Dkt. 32]**

24 Plaintiffs Ismael Ortega, Krisinda Wolfe, Doris Williams-Jenkins and
25 Lilia Silva (“Plaintiffs”), were employees of Defendant Loyal Source
26 Government Services LLC (“Defendant”). They filed this putative class
27 action against Defendant asserting wage and hour claims and claims for
28 failure to make proper disclosures under the Fair Credit Reporting Act.
They now move for final approval of the class settlement (the “Settlement”)

1 with Defendant and of payments to the Class, the Plaintiffs, Class Counsel,
2 and the Settlement Administrator. (Dkt. 32; Dkt. 33).

3 The Court has considered:

- 4 • Plaintiffs' briefing in support of the Motion for Final Approval of
5 Class Settlement (the "Final Approval Motion") (Dkt. 33);
- 6 • Plaintiffs' briefing in support of the Motion for Attorneys' Fees,
7 Costs, and Service Awards (the "Fee Motion") (Dkt. 32);
- 8 • The Supplemental Declaration of Kyle Nordrehaug in support
9 of the Fee Motion (Dk;
- 10 • The Supplemental Declaration of Kyle Nordrehaug in support
11 of the Motion for Final Approval (Dkt. 41);
- 12 • The declarations and exhibits submitted in support of each
13 Motion and the Settlement;
- 14 • The Class Action Settlement Agreement (Dkt. 33-2 Ex. 2);
- 15 • The First Amended Class Action Settlement Agreement (the
16 "Agreement", Dkt. 41 Ex. 1);
- 17 • The entire record in this proceeding, including but not limited to
18 the briefing, declarations, and exhibits submitted in support of
19 preliminary approval of the Settlement in its various iterations,
20 including:
 - 21 ○ The Notice Plan for providing full and fair notice to the
22 Class;
 - 23 ○ The lack of any Class Member objections to the
24 Settlement;
 - 25 ○ The absence of any objection or response by any official
26 after the provision of all notices required by the Class
27 Action Fairness Act of 2005, 28 U.S.C. § 1715; and
 - 28 ○ Counsel's oral presentations at the two hearings on the

1 Settlement's fairness;

- 2 • This Court's experiences, observations, and file developed in
3 presiding over resolution of this matter; and
4 • The relevant law.

5 Based upon these considerations and the Court's findings of fact and
6 conclusions of law as set forth in the Preliminary Approval Order and as
7 discussed below, **IT IS ORDERED:**

- 8 1) Final Approval of the Settlement, the terms of which are set forth
9 in the Agreement, is **GRANTED**;
10 2) The Settlement Class is **CERTIFIED**;
11 3) Plaintiffs Ismael Ortega, Krisinda Wolfe, Doris Williams-Jenkins
12 and Lilia Silva are appointed as Class Representatives and the
13 incentive awards requested in the Fee Motion are **APPROVED**;
14 4) The payments to Claims Administrator KCC, LLC requested in the
15 Fee Motion are **APPROVED**;
16 5) Blumenthal Nordrehaug Bhowmik De Blouw LLP is appointed as
17 Class Counsel and the attorneys' fees requested in the Fee Motion
18 are **APPROVED**;
19 6) Plaintiffs' claims are **DISMISSED WITH PREJUDICE** in
20 accordance with the terms of this Order.

21 **DISCUSSION**

22 **I. Definitions**

23 Except as otherwise specified herein, the Court for purposes of this
24 Final Approval Order adopts all defined terms set forth in the Agreement.

25 **II. Jurisdiction**

26 The Court has subject matter jurisdiction over this action, including
27 jurisdiction over all claims alleged in the action, settlement of those claims
28 on a class-wide basis, all claims released by the Settlement, and any

1 objections submitted to the Settlement pursuant to 28 U.S.C. §§ 1132(a)
2 and (d).

3 The Court also has personal jurisdiction over the parties. As
4 discussed in greater detail below and in the Court's Preliminary Approval
5 Order, the Class Members received adequate notice, had the right to opt
6 out, and were adequately represented by Plaintiffs. Accordingly, the Court
7 can and does exercise jurisdiction over those Class Members' claims. See
8 *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811–12 (1986) (adequate
9 notice and opportunity to be heard permits courts to exercise jurisdiction
10 over claims of absent class members).

11 **III. Findings and Conclusions**

12 **A. Definition of Class and Class Members**

13 The Court adopts the Preliminary Approval Order's definitions of the
14 "California Class," comprised of the "California Class Members," and the
15 "FCRA Class," comprised of the "FCRA Class Members." Those class
16 definitions are reproduced below:

- 17 • The California Class is defined as all individuals who worked
18 for Defendant in California as non-exempt employees during
19 the California Class Period. The "California Class Period" is
20 February 14, 2016 to September 29, 2020.
- 21 • The FCRA Class is defined as all employees or prospective
22 employees of Defendant in the United States for whom
23 Defendant procured a background check during the FCRA
24 Class Period. The "FCRA Class Period" is February 14, 2018
25 to September 29, 2020.

26 The Court excludes from the Classes individuals who requested such
27 an exclusion. Those individuals are listed in Exhibit C to the Declaration of
28 Bernella Osterlund submitted in support of the motion. (Dkt. 34 at 28).

B. Definition of Class and Class Members

Before approving a settlement of class claims, the Court must confirm that the class form is appropriate to the case. Rule 23(a) requires a class to satisfy four prerequisites, generally referred to as numerosity, commonality, typicality, and adequacy of representation. If these are satisfied, the Court must confirm that the action meets one of the class action types enumerated in Rule 23(b)—as relevant here, subsection (3) of that Rule requires that the common questions predominate over individual ones and that a class action be superior to other available methods for fairly and efficiently adjudicating the controversy. Because each of these requirements is met as discussed below, the Court grants final certification of the Class. All Class Members are subject to this Order.

1. Numerosity

The proposed Classes each include over 750 members. This is sufficiently numerous that joinder of all members is impracticable, so Rule 23's numerosity requirement is satisfied. Fed. R. Civ. P. 23(a)(1).

2. Commonality

A properly certified class must also have questions of law or fact common to the class members. Fed. R. Civ. P. 23(a)(2). Each proposed Class satisfies this requirement. The FCRA Class's claims depend on a question regarding the sufficiency of the disclosures contained in the consent form Defendant provided to each FCRA Class Member. The California Class's claims relate to Defendant's generally applicable policies relating to overtime pay, wages, meal and rest periods, wage statements, and cell phone reimbursement.

3. Typicality

A class can be certified only if the class representative's claims are typical of the class's claims. Fed. R. Civ. P. 23(a)(3). A representative's

1 claims are typical “if they are reasonably co-extensive with those of absent
2 class members; they need not be substantially identical.” *Hanlon v.*
3 *Chrysler Co.*, 150 F.3d 1011, 1020 (9th Cir. 1998), *overruled on other*
4 *grounds by Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011). Each
5 Plaintiff was allegedly subject to the employment policies that form the
6 basis of the California Class’s claims, and each Plaintiff allegedly received
7 and signed the consent form that forms the basis of the FCRA class’s
8 claims. The Court finds that Plaintiffs’ claims are reasonably co-extensive
9 with those of the other Class Members.

10 **4. Adequacy of Class Representatives**

11 The next prerequisite to class certification, adequacy of
12 representation, “serves to uncover conflicts of interest between named
13 parties and the class they seek to represent.” *Amchem Prods., Inc. v.*
14 *Windsor*, 521 U.S. 591, 625 (1997); Fed. R. Civ. P. 23(a)(4). No party or
15 objector contends that the Classes lack adequate representation, and
16 Class Counsel has fully and competently prosecuted all claims available to
17 the Classes. Plaintiffs, who are each members of both Classes, possess
18 no apparent interests adverse to those Classes. Class Counsel and the
19 named Plaintiffs are adequate to represent the Classes.

20 **5. The Classes Meet the Requirements of Rule 23(b)(3)**

21 Having met Rule 23(a)’s prerequisites for class certification, Plaintiffs
22 contend that each Class can be certified under Fed. R. Civ. P. 23(b)(3).
23 (See Dkt. 27-1 at 19). This requires the Court to find that questions of law
24 or fact common to Class Members predominate over any questions
25 affecting only individual members and that class treatment is the superior
26 means to adjudicate plaintiffs’ claims. Fed. R. Civ. P. 23(b)(3). These
27 requirements are satisfied as to each Class.

28 Predominance can be established by the existence of a company-

1 wide policy or practice. See, e.g., *Duque v. Bank of America*, Case No. SA
2 CV 18-1298 PA (MRWx), 2018 WL 10483813 at *3-4 (C.D. Cal. Dec. 10,
3 2018). Here, Plaintiffs' claims arise from Defendant's allegedly uniform and
4 systematic employment policies applicable to non-exempt employees, for
5 the California Class, and to background checks, for the FCRA Class. The
6 common questions surrounding these policies predominate this case, and
7 so the predominance requirement is met.

8 The Court must also confirm that the class form is superior to other
9 methods of litigation before certifying a class under Rule 23(b)(3). This
10 inquiry "requires determination of whether the objectives of the particular
11 class action procedure will be achieved in the particular case." *Hanlon*, 150
12 F.3d at 1023. The "dominant[]" objective of the class form is "vindication of
13 the rights of groups of people who individually would be without effective
14 strength to bring their opponents into court at all. . . . The policy at the very
15 core of the class action mechanism is to overcome the problem that small
16 recoveries do not provide the incentive for any individual to bring a solo
17 action prosecuting his or her rights." *Amchem Prods., Inc. v. Windsor*, 521
18 U.S. 591, 617 (1997) (cleaned up). Counsel in this case estimates the
19 California Class's damages at \$4,184,920.36, or \$6,073.90 per member of
20 that 689-person class. The FCRA Class's claims permit recovery of
21 statutory damages of \$100 to \$1,000 per willful violation, plus the costs and
22 reasonable fees incurred in prosecuting the action. 15 U.S.C.
23 § 1681n(a)(1). The Court finds that these amounts are sufficiently small
24 that individual Class Members wouldn't have a sufficient incentive to bring
25 individual actions, so the superiority requirement is satisfied.

26 With the requirements of Rules 23(a) and b(3) satisfied, the Court
27 grants final certification of the California Class and the FCRA Class for
28 settlement purposes only.

IV. The Settlement

“Federal Rule of Civil Procedure 23(e) requires district courts to review proposed class action settlements for fairness, reasonableness, and adequacy.” *Roes, 1–2 v. SFBSC Management, LLC*, 944 F.3d 1035, 1048 (9th Cir. 2019). Because the named plaintiffs, class counsel, and defense counsel may have incentives inconsistent with the interests of absent class members, the Court must take care to protect the due process rights of those absent class members. And because this incongruity is most pronounced where the settlement comes prior to class certification, “settlement approval requires a higher standard of fairness and a more probing inquiry than may normally be required under Rule 23(e).” *Id.* at 1048-49 (internal marks and citation omitted). The Court must look particularly for evidence of collusion or other conflicts of interest to protect absent class members. *Id.*

Applying this standard, the Court finds that the Settlement is fair, reasonable, and adequate to each Class, in light of the complexity, expense, and likely duration of the litigation (including appellate proceedings), as well as the risks involved in establishing liability, damages, and the appropriateness of class treatment through trial and appeal. See *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 963 (9th Cir. 2009). The Settlement appears to be the result of arm’s-length negotiation and the record doesn’t support a conclusion that the Settlement is the result of either: 1) collusion among Plaintiffs, Class Counsel, and Defendants; or 2) conflicts of interest between Plaintiffs and Class Counsel, on the one hand, and the Class Members, on the other.

A. Generally

Under the terms of the Agreement, Defendant will pay a total of \$2,750,000. After subtracting attorneys’ fees and costs, administration

1 costs, Plaintiffs' service awards, the Private Attorneys General Act (PAGA)
2 payment, 41% of the remaining common fund will be paid to members of
3 the FCRA Class and 59% will be paid to members of the California Class.

4 **B. The Settlement Affords Meaningful Relief**

5 Accounting for the fees, costs, service awards, and PAGA payment
6 provided for in this Order, the FCRA Class will receive \$786,955, or
7 \$114.83 per class member. The California Class will receive \$1,132,448:
8 \$1,435.30 per class member or \$37.16 for each week that a class member
9 worked during the period. Each FCRA Class member's recovery amounts
10 to 114% of the statutory minimum recovery, a reasonable amount in
11 settlement. The California Class's recovery is 27% of the damages
12 estimated by Plaintiffs' expert.

13 On the other side of the ledger and as described in further detail *infra*,
14 Section VIII, participating class members will release the claims actually
15 brought and claims that could have been brought under federal or state law
16 arising out of the allegations of the operative complaint and that accrued
17 on or before January 29, 2021. The plaintiffs themselves will release all
18 "claims, transactions or occurrences between them [and Defendant or its
19 affiliated entities or individuals] that occurred during the Class Period." (Dkt.
20 33-2 at 54). And aggrieved employees will release claims for civil penalties
21 that were or could have been asserted under Cal. Labor Code § 2699 and
22 that accrued on or before January 29, 2021.

23 The Court finds the releases reasonable in scope and, in light of the
24 risks, costs, and duration of continued litigation, the amounts paid to
25 Plaintiffs and the Classes fair, reasonable, and adequate consideration for
26 those releases.

27 **C. No Collusion or Conflicts of Interest**

28 The Court finds no evidence to support a conclusion that Plaintiffs

1 and the Defendant colluded. To the contrary, up to and through the
2 Settlement, both Parties vigorously litigated and negotiated this action, as
3 evidenced by the docket.

4 However, the Agreement's "clear sailing" provision, under which
5 Defendants agreed not to contest any request for fees exceeding 25% of
6 the Settlement funds, can be a "subtle sign of collusion." *SFBSC*
7 *Management*, 944 F.3d at 1049. The presence of such a provision requires
8 the Court to look closely at the reasonableness of the recovery and the
9 reasonableness of fees to confirm that Class Counsel haven't negotiated a
10 benefit for themselves using the Class's claims as leverage. *Id.*

11 That scrutiny doesn't reveal evidence that Class Counsel bargained
12 away a Class benefit in exchange for clear sailing on an unreasonably large
13 fee award. The Settlement's benefit to the Class is appropriate in relation
14 to the likelihood of success at trial and the magnitude of the Class claims.
15 Class Counsel's requested fees withstand close scrutiny, too. They seek
16 25% of the total—equal to the Ninth Circuit's benchmark rate and less than
17 the maximum the clear sailing agreement allows without objection. These
18 fees are reasonable. And while the Court finds that the maximum fees
19 allowable under the clear sailing provision would be too high, that amount
20 isn't so extraordinary that the Court can infer that Class Counsel obtained
21 the provision by bargaining away a class benefit.

22 Because it's unlikely that the clear sailing agreement provided a non-
23 negligible benefit to Class Counsel, and because the Class benefit from the
24 Settlement is adequate, the Settlement withstands close scrutiny and the
25 Court finds no apparent collusion.

26 **D. Response of the Classes**

27 The Classes' responses after full, fair, and effective notice (as
28 discussed below) favor final approval of the Settlement. Out of the

1 estimated 7,733 who received notice,¹ none filed an objection to the
2 Settlement and only nine Class Members—one from the California Class
3 and eight from the FCRA Class—requested exclusion.

4 **V. Notice**

5 Pursuant to the Preliminary Approval Order, the Notice of Pendency
6 of Class Action Settlement and Hearing Date for Court Approval (“Class
7 Notice”) was sent to 7,642 Class Members by mail. KCC sent emails to an
8 additional 137 members of the FCRA Class for whom no mailing address
9 was available—91 of these were successfully contacted. The Class Notice
10 informed Class Members of the terms of the Settlement, their right to
11 receive a Settlement Share, their right to comment on or object to the
12 Settlement and/or the attorneys’ fees and costs, their right to elect not to
13 participate in the Settlement and pursue their own remedies, and their right
14 to appear in person or by counsel at the final approval hearing and be heard
15 regarding approval of the Settlement. Adequate periods of time were
16 provided by each of these procedures.

17 This notice procedure afforded adequate protections to Class
18 Members and provides the basis for the Court to make an informed
19 decision regarding approval of the settlement based on the responses of
20 Class Members. The Class Notice provided in this case was the best notice
21 practicable, satisfying the requirements of law and due process.

22 **VI. PAGA Payment**

23 The PAGA payment of \$30,000, with \$22,500 going to the California
24 Labor and Workforce Development Agency and \$7,500 to be distributed
25 among the subset of the California Class that worked for Defendant during
26 the PAGA Period, is approved. That payment must be distributed as set

27
28 ¹ This number includes 7,642 who received notice via mail and 91 who were
successfully contacted via email.

1 forth in the Agreement. Upon entry of this order and judgment, Plaintiffs,
2 individually, and in their capacity as a private attorney generals for, and
3 proxies or agents of, the California Labor and Workforce Development
4 Agency ("LWDA"), and the LWDA, as the real party in interest, will
5 irrevocably release, acquit, and forever discharge Defendant of all claims
6 for civil penalties asserted or which could have been asserted under
7 California Labor Code § 2699, based on the facts and claims alleged in the
8 operative complaints filed in the Action, which have accrued at any time
9 from the beginning of the PAGA Period through January 29, 2021 with
10 respect to the Aggrieved Employees, and, expressly excluding all other
11 claims, including claims for wrongful termination, unemployment insurance,
12 disability, social security, and workers' compensation, and claims outside
13 of the applicable PAGA Period.

14 **VII. Costs and Fees**

15 The fees and expenses of KCC, LLC in administrating the settlement,
16 in the amount of \$70,000, are fair and reasonable. The Court hereby grants
17 final approval to and orders that the payment of that amount be paid out of
18 the Gross Settlement Amount in accordance with the Agreement.

19 The requested Class Representative Service Payments and
20 attorneys' fees and costs are fair and reasonable. The Court hereby grants
21 final approval to and orders that the payment of the amounts of \$5,000 to
22 each of the four Plaintiffs for their Class Representative Service Payments,
23 \$687,500.00 for attorneys' fees to Class Counsel, and \$23,097.30 for
24 reimbursement of costs be paid out of the Gross Settlement Amount in
25 accordance with the Settlement.

26 **VIII. Release**

27 Upon entry of final judgment, Class Members will fully release and
28 forever discharge Defendants and the Released Parties of liability for all

1 claims that were or reasonably could have been alleged based on the facts
2 in the operative complaint which occurred during the Class Period,
3 including any claims related to background checks and any claims arising
4 under the FCRA, CCRAA, ICCRAA, and expressly excluding all other
5 claims, including claims for Labor Code violations, wrongful termination,
6 unemployment insurance, disability, social security, and workers'
7 compensation, and claims outside of the Class Period (collectively, the
8 "Released Claims").

9 Upon entry of final judgment, Plaintiffs will also fully and finally
10 release Defendants and the Released Parties from Plaintiffs' Released
11 Claims.

12 The Plaintiffs also fully and finally release Defendant and the other
13 Released Parties from Plaintiffs' Released Claims.

14 Nothing in this order shall preclude any action to enforce the Parties'
15 obligations under the Settlement or under this order, including the
16 requirement that Defendant make payment in accordance with the
17 Agreement.

18 If, for any reason, the Effective Date (as defined by the Settlement)
19 does not occur, this Order will be vacated; the Parties will return to their
20 respective positions in this action as those positions existed immediately
21 before the Parties executed the Agreement; and nothing stated in the
22 Agreement or any other papers filed with this Court in connection with the
23 Settlement will be deemed an admission of any kind by any of the Parties
24 or used as evidence against, or over the objection of, any of the Parties for
25 any purpose in this action or in any other action.

26 The Parties represent that they entered into the Settlement solely for
27 the purpose of compromising and settling disputed claims. Defendant
28 expressly denies any violation of law or any liability whatsoever to Plaintiffs

1 and/or the Class, individually or collectively.

2 **CONCLUSION**

3 The Settlement is ordered finally approved, and that all terms and
4 provisions of the Settlement are ordered to be consummated. Participating
5 Class Members will be bound by the Settlement. The Parties are hereby
6 ordered to comply with the terms of the Agreement.

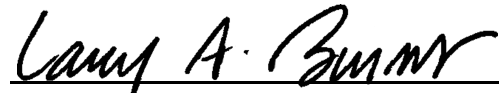
7 The action is **DISMISSED WITH PREJUDICE**, and final judgment is
8 entered. Each side will bear its own costs and attorneys' fees except as
9 provided by the Settlement and this Order.

10 The parties have consented to the continued jurisdiction of United
11 States Magistrate Judge Nita L. Stormes or any Magistrate Judge who may
12 later be assigned over all matters relating to the interpretation,
13 administration, implementation, effectuation and enforcement of this order
14 and the Settlement.

15 The Clerk is directed to close the case.

16 **IT IS SO ORDERED.**

17 Dated: February 7, 2022

18 
19 Hon. Larry Alan Burns
20 United States District Judge
21
22
23
24
25
26
27
28