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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ISMAEL ORTEGA, KRISINDA
WOLFE, DORIS WILLIAMS-
JENKINS, and LILIA SILVA,
individuals, on behalf of themselves
and on behalf of all persons similarly
situated,

Plaintiffs,

vs.

LOYAL SOURCE GOVERNMENT
SERVICES, LLC, a Limited Liability
Company; and Does 1 through 50,
Inclusive,

Defendant.

CASE No. **3:20-cv-0879-LAB-NLS**

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

Hearing Date: July 26, 2021
Hearing Time: 11:30 a.m.

District Judge: Hon. Larry A. Burns
James M. Carter and Judith N. Keep
United States Courthouse
Courtroom 14A

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1 **I. INTRODUCTION**

2 Plaintiffs Ismael Ortega, Krisinda Wolfe, Doris Williams-Jenkins and Lilia Silva
3 (“Plaintiffs”) and Defendant Loyal Source Government Services, LLC (“Defendant”)
4 reached a class settlement. Under the terms of the Class Action Settlement Agreement
5 (“Agreement”), Defendant agrees to pay Two Million Seven Hundred Fifty Thousand
6 Dollars (\$2,750,000) (the “Gross Settlement Amount”) with no reversion for the
7 Settlement and the release of class claims. This Court preliminarily approved the
8 settlement by Order dated March 31, 2021. [Doc. No. 31.] In accordance with the
9 preliminary approval order, the required notice of the proposed settlement was
10 disseminated to the Class of 7,744 members. Currently, the results are that there are no
11 objections and only seven opt-outs.¹

12 The purpose of this Final Approval Hearing is to determine whether the proposed
13 settlement of the litigation should be finally approved and for approval of the award of
14 attorneys' fees and costs to be paid to Class Counsel and the Plaintiffs' service award.²
15 Plaintiffs respectfully submit this Memorandum in support of final approval and the
16 proposed entry of the Order granting final approval and judgment in this class action.

17 **II. SUMMARY OF THE LITIGATION**

18 On February 14, 2020, Plaintiff Ortega, on behalf of himself and all persons
19 similarly situated, commenced the Class Action by filing a class action Complaint
20 against Defendant in the Superior Court of California, San Diego County, alleging the
21 following causes of action: (1) unfair competition in violation of Cal. Bus. & Prof. Code
22 §§ 17200, *et seq.*; (2) failure to pay overtime wages in violation of Cal. Labor Code §§
23 510, *et seq.*; (3) failure to pay minimum wages in violation of California Labor Code §§

25 ¹ The notice period ends on June 28, 2021, which is the date this motion s being filed.
26 After the final figures have been accounted, the Declaration of the Settlement
27 Administrator will be filed in support of this motion to document the notice process and
28 the final results.

² The Declaration of the Plaintiffs are being filed in support of this motion.

1 1194, 1197 & 1197.1; (4) failure to provide meal periods in violation of Cal. Labor Code
2 §§ 226.7 and 512 and the applicable IWC Wage Order; (5) failure to provide rest periods
3 in violation of Cal. Labor Code §§ 226.7 and 512 and the applicable IWC Wage Order;
4 (6) failure to provide accurate itemized wage statements in violation of Cal. Labor Code
5 § 226; (7) failure to provide reimbursements in violation of California Labor Code §
6 2802; and, (8) failure to pay wages when due in violation of Cal. Labor Code §§ 201,
7 202, and 203. Defendant answered Plaintiffs' original complaint on May 11, 2020,
8 denying all material allegations and asserting thirty-two (32) affirmative defenses.
9 (Declaration of Norman Blumenthal ("Decl. Blumenthal"), ¶ 6(a).)

10 On May 26, 2020, plaintiff Ortega filed a Complaint for recovery of civil penalties
11 under the Private Attorneys General Act, Cal. Labor Code §§ 2689 *et seq.* ("PAGA")
12 against Defendant ("PAGA Action"), in the Superior Court of the State of California,
13 County of San Diego. On June 25, 2020, Defendant filed a general denial along with
14 twenty-three (23) affirmative defenses to complaint in the PAGA Action in state court.
15 (Decl. Blumenthal, ¶ 6(b).)

16 The Class Action and the PAGA Action were subsequently removed to federal
17 court and assigned as Case No. 3:20-cv-01173 and Case No. 3:20-cv-00879,
18 respectively. On July 31, 2020, Honorable Larry A. Burns ordered that the Class Action
19 and the PAGA Action be consolidated under Case No. 3:20-cv-00879 (the "Action").
20 [Doc. No. 19]. On September 4, 2020, Plaintiffs filed a First Amended Complaint
21 ("FAC") against Defendant which asserted the same causes of action brought by Plaintiff
22 Ortega in his initial complaint but added the four additional plaintiffs and four additional
23 causes of action for: Violation of the Fair Credit Reporting Act (FCRA) (15 U.S.C. §
24 1681, *et seq.*); Violation of the Fair Credit Reporting Act (15 U.S.C. § 1681, *et seq.*);
25 Violation of the Investigative Consumer Reporting Agencies Act (California Civil Code
26 § 1786, *et seq.*); and, Violation of the Consumer Credit Reporting Agencies Act
27 (California Civil Code § 1786, *et seq.*). (Decl. Blumenthal, ¶ 6(c).)

28 The Parties engaged in investigation and the exchange of documents and

1 information in connection with the Action. Class Counsel conducted significant
2 discovery, research and investigation in furtherance of the prosecution of the Action.
3 This discovery, investigation, research and prosecution included, among other things, (a)
4 formal discovery and multiple conferences with Plaintiffs and with Defendant's counsel;
5 (b) inspection and analysis of thousands of pages of documents and other information
6 produced by Plaintiffs and Defendant formally during the litigation of the Action and
7 informally in preparation for mediation (including class data); (c) analysis of the
8 numerous legal positions taken by Defendant; (d) investigation into the viability of class
9 treatment of the claims asserted in the Action; (e) analysis of potential class-wide
10 damages, including reviewing class data, and analyzing information sufficient to
11 understand Defendant's potential defenses thereto; (f) research of the applicable law with
12 respect to the claims asserted in the Complaint as well as the potential defenses thereto;
13 and (g) assembling and analyzing extensive data and information for calculating
14 damages. (Decl. Blumenthal, ¶ 6(d).)

15 Class Counsel has extensive experience in litigating wage and hour class actions
16 in California. The Parties have vigorously litigated the Action since its inception.
17 During the course of litigation, the Parties each performed analysis of the merits and
18 value of the claims. Plaintiffs engaged in extensive investigation, requiring the
19 production of thousands of pages of documents, including classwide records as to the
20 Class. Plaintiffs and Defendant have engaged in substantial research, discovery, and
21 investigation in connection with the Action. Class Counsel has thoroughly analyzed the
22 value of the claims during the prosecution of this Action. Plaintiffs and Class Counsel
23 believes 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 interests of the
25 Class in light of all known facts and circumstances, including the risk of significant
26 delay, the likelihood that Defendant would prevail on its defenses, and numerous
27 potential appellate issues. (Decl. Blumenthal, ¶ 6(e).)

28 Defendant denies any alleged wrongdoing and contends that the Class Members

1 are not entitled to any monetary relief, including damages and penalties. Specifically,
2 Defendant denies all charges of wrongdoing or liability against it arising out of any
3 conduct, statements, acts or omissions alleged, or that could have been alleged, in the
4 Action. Defendant contends it complied in good faith with wage and hour employment
5 laws. Defendant asserts facts that could negate essential elements of Plaintiffs' claims.
6 Defendant contends, for example, that employees were provided with meal and rest
7 breaks and that all time worked was recorded. Further, there could be significant
8 problems of proof regarding the extent to which members of the Class missed breaks
9 relating to their employ with Defendant. Defendant further denies that, for any purpose
10 other than settling this Action, these claims are appropriate for class, collective, or
11 representative treatment of any kind. (Decl. Blumenthal, ¶ 6(f).)

12 Following the extensive investigation by both Parties, the Parties agreed to engage
13 in private mediation. The Parties attended an all-day mediation on September 29, 2020
14 before David A. Rotman, a respected and experienced mediator. The mediation included
15 discussion and examination of the Parties' respective positions on the legal and factual
16 issues raised on behalf of the Class. At all times, the Parties' settlement negotiations
17 have been non-collusive, adversarial, and at arm's length. The Parties agreed on the
18 basic terms of a class settlement pursuant to the Parties' Memorandum of Understanding
19 executed following the mediation. (Decl. Blumenthal, ¶ 6(g).)

20 By January 26, 2021, the Agreement was finalized and executed. Class Counsel
21 filed the motion requesting preliminary approval of the settlement on February 18, 2021.
22 [Doc. No. 27.]. (Decl. Blumenthal, ¶ 6(h).)

23 By the Order of March 31, 2021, the Court granted preliminary approval of the
24 settlement and approved the mailing of the Notice to the Class. [Doc. No. 31]. Notice
25 of the settlement providing Class Members with notice and the explanation of monetary
26 relief, the right to opt out, or to object was then mailed by the Settlement Administrator
27 on April 28, 2021 to the Class. (Decl. Blumenthal ¶ 6(i).)

28 Currently, out of the 789 individuals in the California Class and 6,853 in the

1 FCRA Class, not one Class Member objected and there was only one (1) opt out from
2 the California Class and six (6) opt outs from the FCRA Class, which means that
3 currently 99.9% of the Class has elected to participate in the Settlement. The final results
4 will be detailed in the Declaration of the Settlement Administrator to be submitted after
5 the June 28, 2021 deadline for opt out and written objections. (Decl. Blumenthal at ¶
6 6(j).)

7 **III. THE SETTLEMENT BEFORE THE COURT**

8 Defendant agrees to pay the Gross Settlement Amount of Two Million Seven
9 Hundred Fifty Thousand Dollars (\$2,750,000) in full and complete satisfaction of the
10 Class Members' Released Claims. (Agreement at ¶ III(A).) The Gross Settlement
11 Amount consists of all payments to Class Members from the Net Settlement Amount,
12 plus (a) the costs of administration of the settlement, (b) all attorneys' fees and costs, (c)
13 service awards to the Plaintiff, and (d) the PAGA Payment. (Agreement at ¶ III(B).)
14 (Decl. Blumenthal at ¶ 3(a).)

15 The amount remaining in the Gross Settlement Amount after the deduction of
16 Court-approved amounts for Class Counsel Fees Payment, Class Counsel Litigation
17 Expenses Payment, the Class Representative Service Payments, the PAGA Payment, and
18 the Settlement Administration Costs (called the "Net Settlement Amount") shall be
19 allocated to Class Members as their Settlement Shares. (Agreement at ¶ I(W) and
20 III(D).) The Settlement Administrator will pay a Settlement Share amount from the Net
21 Settlement Amount to each Participating Class Member (i.e. those Class Members who
22 do not request exclusion). (Agreement at ¶ III(D)(1).) (Decl. Blumenthal, ¶ 3(b).)

23 The Net Settlement Amount shall be divided 41% to the FCRA Class Members
24 (the "FCRA Settlement Amount") and 59% to the California Class Members and
25 Aggrieved Employees (the "California Settlement Amount"). (Agreement at ¶ III(B).)
26 From the FCRA Settlement Amount, the Settlement Share for each Participating Class
27 Member in the FCRA Class will be calculated by dividing the FCRA Settlement Amount
28 on an equal per capita basis to each Participating Class Member in the FCRA Class.

(Agreement at ¶ III(D)(2).) From the California Settlement Amount, the Settlement Share for each Participating Class Member in the California Class will be calculated by (a) dividing this amount by the total number of workweeks worked by all Participating Class Members in the California Class during the Class Period to determine a dollar amount per workweek ("Workweek Payment"), and (b) multiplying the total number of workweeks worked by each Participating Class Member in the California Class during the Class Period by the Workweek Payment. (Agreement at ¶ III(D)(3).) (Decl. Blumenthal, ¶ 3(c).)

KCC was appointed as Settlement Administrator. (Agreement at ¶ III(E).) All administrative fees, costs and expenses incurred by the Settlement Administrator in connection with administering the Settlement will be deducted from the Gross Settlement Amount. The Settlement Administrator has estimated that administering this settlement will not exceed the cost of \$70,000. (Agreement at ¶ III(C)(4).) The actual expenses of will be documented in the forthcoming in the Declaration of the Settlement Administrator. (Decl. Blumenthal, ¶ 3(d).)

Class Counsel has applied to the Court for an award of reasonable attorneys' fees in an amount not to exceed one-third (1/3) of the Gross Settlement Amount, and for reimbursement of reasonable expenses in the amount of \$23,097.30, both subject to Court approval. (Agreement at ¶ III(C)(2). The Plaintiffs have also applied for Court approval of service awards in the reduced amount of \$5,000 each in consideration for their service as the class representatives. (Agreement at ¶ III(C)(1).) The motion is scheduled for the Final Approval Hearing and was filed on May 28, 2021 [Doc. No. 32], which is well before the deadline for written objections to the Settlement. (Decl. Blumenthal, ¶ 3(e).)

The scope of the release by all Class Members who do not opt out tracks the scope of the allegations in the Action. Upon the Effective Date, the Defendant shall be entitled to a release as follows:

(i) a release from the Participating Class Members who are also FCRA

1 Class Members of all FCRA claims alleged in the operative complaint
2 which occurred through the date of preliminary approval or January 29,
3 2021 (whichever is earlier), and also including any similar claims that were
4 or could have been brought under state law arising out of the allegations in
5 the operative complaint, including the Investigative Consumer Reporting
6 Agencies Act and Consumer Credit Reporting Agencies Act; and, (ii) a
7 release from the Participating Class Members who are also California Class
8 Members of all claims that were or could have been alleged under federal,
9 state, or local law arising out of the allegations in the operative complaint,
10 including all causes of action alleged in the operative complaint or any
11 other claims arising out of the allegations in the operative complaint as to
12 the federal, state, or local wage & hour laws alleged in the operative
13 complaint, which occurred through the date of preliminary approval or
14 January 29, 2021 (whichever is earlier); and, expressly excluding all other
15 claims, including claims for wrongful termination, unemployment
16 insurance, disability, social security, and workers' compensation, and
17 claims outside of the applicable FCRA Class Period and/or California Class
18 Period.

19 (Agreement at ¶ III(G)(1).) (Decl. of Blumenthal at ¶ 3(f).)

20 Class Members were permitted the opportunity to object to or comment on the
21 Settlement; or elect not to participate in the Settlement. Class Members who wished to
22 exclude themselves from the Settlement must have mailed a written Election Not to
23 Participate in Settlement to the Settlement Administrator not later than sixty (60) after
24 the Settlement Administrator mailed the Class Notice. (Agreement at ¶ III(3)(c).) Class
25 Members who wished to object to the Settlement must have submitted their written
26 objections to the Settlement Administrator not later than sixty (60) days after the mailing
27 of the Class Notice or alternatively may appear at the Final Approval Hearing to make
28 an oral objection. (Agreement at ¶ III(3)(a).) To date, there have been no objections and
only seven opt outs (six from the FCRA Class and one from the California Class).
(Decl. Blumenthal at ¶ 3(g).)

The Settlement is fair, adequate and reasonable to the class and should be finally
approved. In sum, this settlement valued at \$2,750,000 provides the Class Members with
the opportunity to receive a substantial monetary recovery. This result is particularly
remarkable in light of the fact that there was also a risk that, if the matter was not settled,
Plaintiffs would be unable to prevail at trial on behalf of the entire Class, and thereby not
recover on behalf of any individuals other than themselves. As such, liability in this case

1 was far from certain in light of the defenses asserted by Defendant. Finally, the
2 pandemic circumstances impacting many employees only further underscores the
3 importance of distributing these settlement payments to the Class Members. (Decl.
4 Blumenthal ¶ 3(h).)

5 **IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS** 6 **COURT TO GRANT FINAL APPROVAL**

7 When a proposed class-wide settlement is reached, it must be submitted to the
8 court for approval. 2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992)
9 at §11.41, p.11-87. Court approval of a class settlement is considered at a final
10 settlement approval hearing, at which evidence and argument concerning the fairness,
11 adequacy, and reasonableness of the settlement may be presented and class members
12 may be heard regarding the settlement. *See Manual for Complex Litigation, Second*
13 *§30.44* (1993). During final approval, the court must determine whether the settlement
14 is fair, reasonable and adequate. *See Officers for Justice v. Civil Service Com'n, etc.*, 688
15 F.2d. 615, 625 (9th Cir. 1982) and Fed. Rules Civ. Proc., rule 23(e).

16 Governing the settlement of class actions, the Federal Rules of Civil Procedure,
17 §23 (e) specifically provides for the Court to consider the following factors:

- 18 (A) the class representatives and class counsel have adequately represented
19 the class;
- 20 (B) the proposal was negotiated at arm's length;
- 21 (C) the relief provided for the class is adequate, taking into account:
 - 22 (i) the costs, risks, and delay of trial and appeal;
 - 23 (ii) the effectiveness of any proposed method of distributing relief to
the class, including the method of processing class-member claims;
 - 24 (iii) the terms of any proposed award of attorneys' fees, including
timing of payment; and
 - 25 (iv) any agreement required to be identified under Rule 23(e)(3); and
- 26 (D) the proposal treats class members equitably relative to each other.

27 Fed. R. Civ. P. 23(e)(2).

28 As set forth herein, this Settlement was reached through arm's-length negotiations.
The Settlement was negotiated by experienced counsel for the Class and represented by
adequate Class Representatives, who protected the interests of the Class Members.
There were complex legal and factual issues that placed the ultimate outcome of this

1 litigation in doubt. Accordingly, the immediate value of the Settlement to the Class
2 Members far outweighs the possibility of relief if this protracted and expensive litigation
3 had continued through trial and appeal. Finally, the considered judgment of all Parties
4 to the Settlement is that the Settlement is fair and reasonable in light of the immediate
5 benefit provided by the Settlement to the Class Members, which is a conclusion that is
6 reinforced by the response of the Class Members participating in the Settlement.

7 Settlements of disputed claims are favored by the courts. *Waits v. Weller*, 653
8 F.2d 1288, 1291 (9th Cir 1981) ("settlement encouraged in appropriate class action
9 settlements"). In evaluating settlements, the courts have long recognized that
10 compromise is particularly appropriate since such litigation is difficult and notoriously
11 uncertain. Settlement is especially favored in class actions because it minimizes the
12 litigation expenses of all parties and reduces the strain on judicial resources. *Officers for*
13 *Justice, supra*, 688 F.2d at 625 ("voluntary conciliation and settlement are the preferred
14 means of dispute resolution. This is especially true in complex class action litigation");
15 *Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992) ("This is especially true
16 in light of the strong judicial policy that favors settlements, particularly where complex
17 class action litigation is concerned."); *Garcia v. L.A. County Sheriff's Dep't*, 2015 U.S.
18 Dist. LEXIS 192443, *40 (C.D. Cal. 2015) (citing policy favoring settlement in complex
19 class litigation").

20 "[T]he court's intrusion upon what is otherwise a private consensual agreement
21 negotiated between the parties to a lawsuit must be limited to the extent necessary to
22 reach a reasoned judgment that the agreement is not the product of fraud or overreaching
23 by, or collusion between, the negotiating parties, and that the settlement, taken as a
24 whole, is fair, reasonable and adequate to all concerned." *Officers for Justice, supra*,
25 688 F.2d at 625. Under this standard, the court must decide whether the proposed
26 settlement falls within the range of reasonable settlements, taking into account that
27 settlements are compromises between the parties reflecting subjective, unquantifiable
28 judgments concerning the risks and possible outcomes of litigation. *Id.*

1 In cases such as this one, courts have repeatedly emphasized that there is a strong
2 initial presumption that the compromise is fair and reasonable. *In re Heritage Bond*
3 *Litig.*, 2005 U.S. Dist. Lexis 13555, at *11 (C.D. Cal. 2005). Courts are advised not to
4 adjudicate the merits of the action, nor substitute their judgment for that of the parties
5 who negotiated the settlement, nor should they reopen and enter into negotiations with
6 the litigants in the hopes of improving the terms of the settlement. *Id.*, at *11; *Officers*
7 *for Justice*, *supra*, 688 F.2d at 625.

8 The essential evaluation is whether, given the risks of litigation and the range of
9 probable results, the settlement, taken as a whole, is fair, reasonable and adequate to all
10 concerned. *Officers for Justice*, *supra*, 688 F.2d at 625; *Hanlon v. Chrysler Corp.*, 150
11 F.3d 1011, 1026 (9th Cir. 1998). Here, the facts and circumstances compel the
12 conclusion that the proposed settlement satisfies that standard.

13 **V. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE**

14 **A. The Test for Fairness**

15 To determine whether a settlement is fair, reasonable, and adequate, courts
16 consider factors such as: "(1) the strength of the plaintiffs' case; (2) the risk, expense,
17 complexity, and likely duration of further litigation; (3) the risk of maintaining class
18 action status throughout the trial; (4) the amount offered in settlement; (5) the extent of
19 discovery completed and the stage of the proceedings; (6) the experience and views of
20 counsel; (7) the presence of a governmental participant; and (8) the reaction of the class
21 members to the proposed settlement." *Churchill v. Gen. Elec.*, 361 F.3d 566, 575 (9th
22 Cir. 2004); see also *Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003).

23 The list of factors is not exhaustive and should be tailored to each case. *Officers*
24 *for Justice*, at 625. Due regard should be given to what is otherwise a private consensual
25 agreement between the parties. *Id.* The inquiry "must be limited to the extent necessary
26 to reach a reasoned judgment that the agreement is not the product of fraud or
27 overreaching by, or collusion between, the negotiating parties, and that the settlement,
28

1 taken as a whole, is fair, reasonable and adequate to all concerned." *Id.*, at 625.
2 "Ultimately, the [trial] court's determination is nothing more than 'an amalgam of
3 delicate balancing, gross approximations and rough justice." *Id.*

4 The question whether a proposed settlement is fair, reasonable and adequate
5 necessarily requires a judgment and evaluation by the attorneys for the parties based
6 upon a comparison of "the terms of the compromise with the likely rewards of
7 litigation." *Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir. 1982), cert. denied 464
8 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders of TMT Trailer*
9 *Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)). Therefore, many courts
10 recognize that the opinion of experienced counsel supporting the settlement is entitled
11 to considerable weight. *Kirkorian v. Borelli*, 695 F. Supp. 446, 451 (N.D. Cal. 1988);
12 *Reed v. General Motors Corp.*, 703 F.2d 170, 175 (5th Cir. 1983); *Weinberger*, 698 F.2d
13 at 74; *Armstrong v. Board of School Directors*, 616 F.2d 305, 325 (7th Cir. 1980); *Fisher*
14 *Bros. v. Cambridge-Lee Indus., Inc.*, 630 F. Supp. 482, 489 (E.D. Pa. 1985). For
15 example, in *Lyons v. Marrud, Inc.*, 1972 U.S. Dist. LEXIS 13401, *5 (S.D.N.Y. 1972),
16 the court noted that "[e]xperienced and competent counsel have assessed these problems
17 and the probability of success on the merits. They have concluded that compromise is
18 well-advised and necessary. The parties' decision regarding the respective merits of their
19 position has an important bearing on this case." *Id.* at *5.

20 **B. The Settlement Satisfies the Test for Fairness**

21 1. The Investigation and Discovery are Sufficient to Allow Class 22 Counsel and the Court to Act Intelligently

23 As detailed during Preliminary Approval, Class Counsel has conducted a thorough
24 investigation into the facts of the class action, including a review of relevant documents
25 and data and a diligent investigation of the Class Members' claims against Defendant.
26 Class Counsel also retained an expert to prepare a damage valuation for use in the
27 mediation and negotiations. Class Counsel also has experience in settlements involving
28 similar claims brought by employees. The Parties and their counsel recognize that, in

1 the absence of an approved settlement, they would face a protracted litigation course,
2 including a contested motion for certification, motions for summary judgment, and trial
3 and appellate proceedings that would consume time and resources and present each of
4 them with ongoing litigation risks and uncertainties. (Decl. Blumenthal at ¶ 7(a).)

5 Plaintiffs and Class Counsel recognize the expense and length of continuing to
6 litigate and trying this Action against Defendants through possible appeals which could
7 take several years, especially in complex actions such as this litigation. Class Counsel
8 is also mindful of and recognize the inherent problems of proof under, and alleged
9 defenses to, the claims asserted in the Action. Based on the foregoing documents and
10 data, and their own independent investigation and evaluation, Class Counsel is of the
11 opinion that the settlement with Defendant for the consideration and on the terms set
12 forth in the Settlement is fair, reasonable, and adequate in light of all known facts and
13 circumstances, including the risk of significant delay, defenses asserted by Defendant,
14 and numerous potential appellate issues. Based upon their evaluation, Plaintiffs and
15 Class Counsel have determined that the settlement set forth in the Agreement is in the
16 best interest of the Class Members. (Decl. Blumenthal at ¶ 8(d).)

17 Class Counsel has litigated similar wage and hour cases against other employers.
18 (Decl. Blumenthal at ¶ 2.) Although Plaintiffs and Class Counsel believed that the case
19 had merit, they recognized the potential risks both sides would face if litigation of this
20 action continued. As the federal court held in *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist.
21 LEXIS 8476 (N.D.Cal. 2007), where the parties faced uncertainties similar to those in
22 this litigation:

23 In light of the above-referenced uncertainty in the law, the risk, expense,
24 complexity, and likely duration of further litigation likewise favors the
25 settlement. Regardless of how this Court might have ruled on the merits
26 of the legal issues, the losing party likely would have appealed, and the
27 parties would have faced the expense and uncertainty of litigating an
28 appeal. "The expense and possible duration of the litigation should be
considered in evaluating the reasonableness of [a] settlement." See *In re*
Mego Financial Corp. Securities Litigation. 213 F.3d 454, 458 (9th Cir.
2000). Here, the risk of further litigation is substantial.

1 *Id.* at *12.

2 Negotiations were hard-fought and aggressive with capable advocacy on both
3 sides. Defendant vigorously disputed liability and the amount of damages that were
4 claimed to be owed. Liability in this action was hotly disputed and would be subject to
5 a motion for summary judgment. Even if summary judgment was denied, liability would
6 still be subject to a contested trial on the merits. (Decl. Blumenthal at ¶ 7(b).)

7 Based on the complexity of the case, the novelty of the legal issues, the substantial
8 risks and uncertainty of the outcome on both liability and certification issues, as well as
9 the need to establish damages, Plaintiffs believe that the Settlement is fair, reasonable
10 and in the best interests of the Class Members. There can be no doubt that counsel for
11 both parties possessed sufficient information to make an informed judgment regarding
12 the likelihood of success on the merits and the results that could be obtained through
13 further litigation, given the relative strengths and weaknesses of their position. (Decl.
14 Blumenthal at ¶ 7(h).)

15 2. The Settlement Was Reached Through Arm's Length Bargaining
16 and Presents Adequate Relief for the Class

17 Settlement negotiations took place between experienced counsel and were
18 contentious and arm's length. Plaintiffs and Class Counsel recognize the expense and
19 length of continuing to litigate and trying this Action against Defendant through possible
20 appeals which could take several years. Class Counsel has also taken into account the
21 uncertain outcome and risk of litigation, especially in complex actions such as this
22 litigation. Class Counsel is also mindful of and recognize the inherent problems of proof
23 under, and alleged defenses to, the claims asserted in the Action. Based upon their
24 evaluation, Plaintiffs and Class Counsel have determined that the settlement set forth in
25 the Agreement is in the best interest of the Class Members. Plaintiffs and Class Counsel
26 believe that the settlement with Defendant for the consideration and on the terms set
27 forth in the Agreement is fair, reasonable, and adequate and is in the best interest of the
28 Class in light of all known facts and circumstances, including the risk of significant

1 delay, the likelihood that Defendant would prevail on one or more of its defenses, and
2 numerous potential appellate issues. By reason of the settlement, Defendants agree to pay
3 the Gross Settlement Fund of Two Million Seven Hundred Fifty Thousand Dollars
4 (\$2,750,000) as provided by the Agreement. (Decl. Blumenthal at ¶7(b).)

5 In advance of negotiations, Class Counsel received class data concerning
6 employment and payroll information, which permitted Class Counsel to make an
7 intelligent evaluation. The calculations to compensate for the amount due for the Class
8 at the time of the mediation were calculated by Berger Consulting, Plaintiffs' damage
9 expert. As to the California Class whose claims are at issue in this Action, Plaintiffs used
10 an expert (Berger Consulting) to analyze the data and determine the potential unpaid
11 wages for the employees. The maximum potential damages were calculated to be
12 \$916,278 for the allegedly underpaid overtime due to the miscalculation of the regular
13 rate, \$1,006,511.25 for meal periods at a 25% violation rate, \$1,006,511.25 for rest
14 period damages at a 25% violation rate, \$903,769.86 for the off-the-clock work at 1 hour
15 per week, minimum wage claim resulting from standby work, and \$351,850 for the
16 unreimbursed cell-phone expenses. As a result, the total damage valuation was therefore
17 calculated that Defendant was subject to a maximum damage claim in the amount of
18 \$4,184,920.35. As to potential penalties, Plaintiffs calculated that wage statement
19 penalties were a maximum of \$621,700 and potential waiting time penalties were in a
20 range from \$1,210,082 to \$2,348,983 depending on the derivative claim giving rise to
21 the allegedly unpaid wages. (Decl. Blumenthal, ¶ 7(d).)

22 Consequently, the California Settlement Amount of \$1,622,500 (59% of the Gross
23 Settlement Amount) represents more than 38% of the value of the damages at issue in
24 this case at the time this Settlement was negotiated, assuming these amounts could be
25 proven at trial. Given the amount of the settlement as compared to the potential value
26 of claims in this case and the defenses asserted by Defendant, the settlement is fair and
27 reasonable. (Decl. Blumenthal, ¶ 7(d).)

1 As to the FCRA Class, FCRA provides for statutory damages of \$100 to \$1,000
2 per willful violation. 15 U.S.C. § 1681n. A comparison of approved FCRA settlements
3 involving similar facts further confirms the reasonableness of this Settlement. The Court
4 in *Pietras v. Sentry Ins. Co.*, 513 F. Supp. 2d 983, 985 (N.D. Ill 2007), “cited eighteen
5 cases, which settled for an average of \$34.59 per class member.” Similarly, in *Bailes v.*
6 *Lineage Logistics, LLC*, 2016 U.S. Dist. LEXIS 110943 (D. Kan 2016), the District
7 Court approved a FCRA class settlement which provided for a fund of \$149,205 for a
8 class of 3,430, which correlates to \$43.50 per person. In *Feist v. Petco Animal Supplies,*
9 *Inc.*, 2018 U.S. Dist. LEXIS 98686 (S.D. Cal. 2018), Judge Marilyn Huff recently
10 granted preliminary approval to an FCRA class settlement of \$1.2 million for a class of
11 37,000, which equates to \$32.43 per person.³ Here, the settlement amount of \$100 per
12 person is certainly fair and reasonable given the prior approved FCRA settlements and
13 the defenses asserted by Defendant. Clearly the goal of this litigation to obtain redress
14 for the Class has been met. (Decl. Blumenthal ¶ 7(e).)

15 Following the extensive investigation by both Parties, the Parties agreed to engage
16 in private mediation. The Parties attended an all-day mediation on September 29, 2020
17 before David A. Rotman, a respected and experienced mediator. The mediation included
18 discussion and examination of the Parties’ respective positions on the legal and factual
19 issues raised on behalf of the Class. At all times, the Parties’ settlement negotiations
20 have been non-collusive, adversarial, and at arm's length. The Parties agreed on the

21
22 ³ See also *Moore v. Aerotek, Inc.*, 2017 WL 2838148, at *4 (S.D. Ohio 2017)
23 (per-capita gross recovery of \$25 in FCRA case); *Aceves v. Autozone Inc.*, No.
24 5:14-cv-2032, ECF No. 58 (C.D. Cal. 2016) (approval of FCRA settlement with gross
25 recovery of \$20 per disclosure class member); *Patrick v. Interstate Mgmt. Co., LLC*, No.
26 8:15-cv-1252, ECF No. 42 (M.D. Fla. 2016) (approval of FCRA disclosure claim where
27 class members received \$9 each); *Landrum v. Acadian Ambulance Serv., Inc.*, No.
28 14-cv-1467, ECF No. 37 (S.D. Tex. 2015) (approval of FCRA disclosure settlement of
\$10 per person); *Walker v. McClane/Midwest, Inc.*, No. 2:14-cv-04315, ECF No. 29
(W.D. Mo. 2015) (approval of FCRA settlement in which disclosure class members
recovered \$24).

1 basic terms of a class settlement pursuant to the Parties' Memorandum of Understanding
2 executed following the mediation. (Decl. Blumenthal at ¶6(g).)

3 After the settlement negotiations, the specific terms of the Agreement required
4 additional negotiation before the final written agreement could be signed. Even after the
5 parties reached an agreement as to the material terms, Class Counsel had to ensure that
6 the terms of the final settlement agreement were fair to every member of the Class and
7 retained the requisite opportunities for notice, exclusion, and objection in accordance
8 with class action law. (Decl. Blumenthal at ¶7(c).)

9 Plaintiffs filed the motion for preliminary approval of the Settlement, and by the
10 Order dated March 31, 2021, the Court granted preliminary approval of the Settlement
11 and approved the mailing of the Class Notice to the Class. [Doc. No. 31]. Notice of the
12 settlement providing Class Members with notice and an opportunity to claim monetary
13 relief, to object, or to opt out, was then mailed by the Settlement Administrator on April
14 28, 2021 to the 789 individuals who comprise the California Class and 6,853 individuals
15 in the FCRA Class.⁴ (Decl. Blumenthal at ¶6(i).)

16 3. Counsel Is Experienced in Similar Litigation and Believes the
17 Settlement Is Fair and Reasonable to the Class

18 Class Counsel in this matter has extensive class action experience in many fields
19 and has represented thousands of employees in actions including labor and employment
20 litigation, wage and hour class actions, representative PAGA actions and complex
21 litigation. Class Counsel has been previously approved as experienced Class Counsel
22 by state and federal courts throughout California, and Courts have found that Class
23 Counsel has substantial experience handling large employment related class actions and
24 has been found to be qualified class counsel in prior actions. A list of previous and

25
26 ⁴ As will be detailed by the Settlement Administrator, there were 137 potential FCRA
27 Class Members for whom there was only an email and no mailing address, so an email
28 blast with the Class Notice was sent to these 137 and was successful as to 91 of these
potential FCRA Class Members.

1 current class action cases managed and settled by the Class Counsel in this action is
2 provided to the Court by way of the Declaration of Norman Blumenthal. Class Counsel
3 have participated in every aspect of the settlement discussions and have concluded the
4 settlement is fair, adequate and reasonable and in the best interests of the Class. (Decl.
5 Blumenthal at ¶ 2.)

6 4. The Reaction of the Class Is Positive

7 After dissemination of the class notice to the 789 members of the California Class
8 and the 6,853 members of the FCRA Class, which provided each Class Member with the
9 terms of the settlement, to date, not a single Class Member has filed an objection to the
10 settlement and only seven Class Members requested exclusion (six (6) opt outs are from
11 the FCRA Class and one (1) opt out is from the California Class). As a result, 99.9% of
12 the Class will be participating in the Settlement and will be sent a payment. (Decl.
13 Blumenthal at ¶4.) The absence of any objector strongly supports the fairness,
14 reasonableness and adequacy of the Settlement. See *In re Austrian & German Bank*
15 *Holocaust Litigation*, 80 F. Supp. 2d 164, 175 (S.D.N.Y. 2000) ("If only a small number
16 of objections are received, that fact can be viewed as indicative of the adequacy of the
17 settlement."); *Stoetzner v. U.S. Steel Corp.*, 897 F.2d 115, 118-119 (3d. Cir. 1990) (29
18 objections out of 281 member class 'strongly favors settlement'); *Laskey v. Int'l Union*,
19 638 F.2d 954 (6th Cir. 1981) (The fact that 7 out of 109 class members objected to the
20 proposed settlement should be considered when determining fairness of settlement.)

21 Importantly, every Class Member was given the opportunity to participate in the
22 Settlement under the same terms. Nearly the entire Class elected to participate in the
23 Settlement and will be mailed a check for their settlement share. The details of the
24 notice process will be set forth in the forthcoming Declaration of the Settlement
25 Administrator. Here, given the fact that not one Class Member objected, the Court
26 should conclude that the settlement is fair, reasonable and adequate. (Decl. Blumenthal
27 at ¶ 4)

1 5. The Strength of Plaintiffs' Case and the Risks of Further Litigation

2 In advance of settlement negotiations and mediation, Class Counsel has conducted
3 a thorough investigation into the facts of the class action, including a review of relevant
4 documents and data and a diligent investigation of the Class Members' claims against
5 Defendant. Class Counsel also retained an expert to prepare a damage valuation in
6 advance of mediation. Class Counsel also has experience in settlements involving
7 similar claims against other employers. Based on the foregoing documents and data, and
8 their own independent investigation and evaluation, Class Counsel is of the opinion that
9 the settlement with Defendant for the consideration and on the terms set forth in the
10 Settlement is fair, reasonable, and adequate in light of all known facts and circumstances,
11 including the risk of significant delay, defenses asserted by Defendant, and numerous
12 potential appellate issues. The parties and their counsel recognize that, in the absence
13 of an approved settlement, they would face a protracted litigation course, including a
14 contested motion for certification, motions for summary judgment, and trial and
15 appellate proceedings that would consume time and resources and present each of them
16 with ongoing litigation risks and uncertainties. (Decl. Blumenthal at ¶ 8(c).)

17 The risks, complexities and duration of further litigation cannot be overstated.
18 Defendant asserted a number of defenses that presented serious threats to the claims of
19 the Plaintiffs and the other Class Members. Defendant contends that Defendant's
20 employment practices complied with all applicable Labor laws. Defendant argued that
21 federal law preempts the claims because employees worked on a federal enclave.
22 Defendant also argued that the California Supreme Court decision in *Brinker v. Superior*
23 *Court*, 53 Cal. 4th 1004 (2012), weakened Plaintiffs' claims, on liability, value, and class
24 certifiability. Finally, several Courts have held that meal and rest period violations do
25 not give rise to wage statement or waiting time penalties. See e.g. *Ling v. P.F. Chang's*
26 *China Bistro, Inc.*, 245 Cal. App. 4th 1242, 1261 (2016). As to the FCRA claim,
27 Defendant argued that because the disclosure document consisted solely of the
28

1 disclosure, it complied with FCRA in all respects, even though a separate document
2 contained a release. *Coleman v. Kohl's Dep't Stores, Inc.*, 2015 U.S. Dist. LEXIS
3 135746, *17 (N.D. Cal. 2015) (holding a release in a separate document does not violate
4 FCRA); *Luna v. Hansen & Adkins Auto Transp., Inc.*, 2018 U.S. Dist. LEXIS 100055,
5 *18-*19 & n.6 (C.D. Cal. 2018). Finally, the court may find remitter/reduction of the
6 statutory damages appropriate. See e.g. *Klingensmith v. Max & Erma's Restaurants, Inc.*,
7 2007 U.S. Dist. LEXIS 81029, 2007 WL 3118505, at *5 (E.D.Pa. 2007). If successful,
8 Defendant's defenses could eliminate or substantially reduce any recovery to the Class.
9 While Plaintiffs believe that these defenses could be overcome, Defendant maintains
10 these defenses have merit and therefore present a serious risk to recovery. (Decl.
11 Blumenthal ¶ 8(a).)

12 Moreover, there was also a significant risk that, if the Action was not settled,
13 Plaintiffs would be unable to obtain class certification and maintain a certified class
14 through trial, and thereby not recover on behalf of any employees other than themselves.
15 At the time of the mediation, Defendant forcefully opposed the propriety of class
16 certification, arguing that individual issues precluded class certification. Further, as
17 demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National*
18 *Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class-wide
19 recovery even where the class has been certified. While other cases have approved class
20 certification in wage and hour claims, class certification in this action would have been
21 hotly disputed and was by no means a foregone conclusion. (Decl. Blumenthal at ¶
22 8(b).)

23 Plaintiffs and Class Counsel recognize the expense and length of continuing to
24 litigate and trying this Action against Defendant through possible appeals which could
25 take several years. Class Counsel has also taken into account the uncertain outcome and
26 risk of litigation, especially in complex actions such as this litigation. Class Counsel is
27 also mindful of and recognize the inherent problems of proof under, and alleged defenses
28

1 to, the claims asserted in the Action. Based upon their evaluation, Plaintiffs and Class
2 Counsel have determined that the settlement set forth in the Agreement is in the best
3 interest of the Class Members. (Decl. Blumenthal at ¶8(d).)

4 It is impossible to predict with certainty whether, under the facts of this case,
5 Plaintiffs would prevail against the Defendant's factual and legal defenses. While
6 Plaintiffs and Class Counsel believe in the merits of the claims, Defendant has asserted
7 real and substantial defenses to them. Settlement in this case clearly benefits the
8 settlement class when measuring the strengths of the case and the risk of establishing
9 liability and damages. (Decl. Blumenthal at ¶8(e).)

10
11 **VI. CONCLUSION**

12 For the reasons stated herein and in the accompanying declarations, Plaintiffs
13 respectfully submit that the proposed settlement is fair, reasonable and adequate to the
14 Class and to each Class Member, and should therefore be finally approved.

15 Respectfully submitted,

16 Dated: June 28, 2021

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW

18 By: /s/ Norman Blumenthal
19 Norman B. Blumenthal
20 Kyle R. Nordrehaug
21 Attorneys for Plaintiffs
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