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13
14 **UNITED STATES DISTRICT COURT**
15 **SOUTHERN DISTRICT OF CALIFORNIA**
16

17 ISMAEL ORTEGA, KRISINDA
18 WOLFE, DORIS WILLIAMS-
19 JENKINS, and LILIA SILVA,
20 individuals, on behalf of themselves
21 and on behalf of all persons similarly
22 situated,

23 Plaintiff,

24 vs.

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

Defendants.

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

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

Hearing Date: March 22, 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 have reached a full and final Settlement of the above-captioned class action, which is
5 embodied in the Class Action Settlement Agreement (“Agreement”) filed concurrently
6 with the Court as Exhibit #1 to the Declaration of Kyle Nordrehaug (“Decl.
7 Nordrehaug”).¹ By this motion, Plaintiffs seek preliminary approval of the Agreement
8 as fair, reasonable, and adequate, entry of the Preliminary Approval Order submitted
9 herewith, and scheduling of the Final Approval Hearing to determine final approval of
10 the Settlement.

11 **II. SUMMARY OF THE SETTLEMENT**

12 Counsel for the Parties, after litigation and contentious settlement negotiations,
13 agreed to a settlement that is fair, reasonable, and favorable to the Class, which consists
14 of both the California Class and the FCRA Class. The California Class is defined as “all
15 individuals who worked for Defendant in California as non-exempt employees during
16 the California Class Period.” The FCRA Class is defined as all employees or prospective
17 employees of Defendant in the United States for whom Defendant procured a
18 background check during the FCRA Class Period.” (Agreement at ¶ I(D).) Decl.
19 Nordrehaug, ¶3.

20 Under the terms to which the Parties have agreed, Defendant agrees to pay Two
21 Million Seven Hundred Fifty Thousand Dollars (\$2,750,000) (the “Gross Settlement
22 Amount”) with no reversion in consideration for the settlement and the release of claims
23 as described in the Agreement. (Agreement at ¶ I(T).) Decl. Nordrehaug, ¶4. This is
24 an all-in Settlement. There is no reversion of any portion of the Gross Settlement
25 Amount to Defendant, and no claim form is required to be paid. (Agreement at ¶ I(T).)
26 Class Members who do not opt-out of the Class by timely submitting an opt-out request
27

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

1 shall be automatically paid their share of the Net Settlement Amount. (Agreement at ¶
2 III(D).) Decl. Nordrehaug, ¶5.

3 This is an excellent result for the members of the Class. The litigation risks that
4 the Plaintiffs and Class Members face if the case were not settled include, among other
5 things, an adverse decision on contested class certification, an adverse decision on the
6 merits, loss of motions which would result in limiting any exposure, the possibility that
7 a trial would return a less favorable verdict, and possible appellate review. Liability in
8 this case was uncertain because the trier of fact, may have found that some or all of the
9 Class Members were properly compensated and/or that Defendant complied with
10 applicable law. Class Counsel and Plaintiffs wish to avoid these risks and uncertainties,
11 as well as the consumption of time and resources of litigation, through settlement
12 pursuant to the terms and conditions of the Agreement, which was reached through arm's
13 length negotiations before David Rotman, an experienced mediator of employment class
14 actions. Decl. Nordrehaug, ¶6.

15 **III. NATURE OF THE CASE**

16 The procedural history is set forth at length in the accompanying Declaration of
17 Nordrehaug at paragraphs 7 through 12, and is summarized below. Plaintiff Ortega
18 initially filed the Class Action against Defendant in the Superior Court of California, San
19 Diego County, and then also filed a separate PAGA Action against Defendant in the
20 same Court. Decl. Nordrehaug, ¶¶ 7-8. The Class Action and the PAGA Action were
21 removed to federal court and consolidated. Decl. Nordrehaug, ¶9. Plaintiffs then filed
22 the First Amended Complaint ("FAC") which is the operative complaint and alleges
23 wage and hour claims and claims under the Fair Credit Reporting Act (FCRA) and
24 California Civil Code § 1786, *et seq.* on behalf of the Class. See Decl. Nordrehaug, ¶9.

25 Class Counsel conducted significant discovery, research and investigation in
26 furtherance of the prosecution of the Action. This discovery, investigation, research and
27 prosecution included, among other things, (a) formal discovery and multiple conferences
28 between counsel; (b) inspection and analysis of thousands of pages of documents and

1 other information produced by Plaintiffs and Defendant formally during the litigation of
2 the Action and informally in preparation for mediation (including class data); (c) analysis
3 of the numerous legal positions taken by Defendant; (d) investigation into the viability
4 of class treatment of the claims; (e) analysis of potential class-wide damages, including
5 reviewing class data, and analyzing information sufficient to understand Defendant's
6 potential defenses; (f) research of the applicable law with respect to the claims asserted
7 as well as potential defenses; and (g) assembling and analyzing extensive data and
8 information for calculating damages. Decl. Nordrehaug, ¶10.

9 Class Counsel has extensive experience in litigating wage and hour class actions
10 in California and has thoroughly analyzed the value of the claims during the prosecution
11 of this Action. See Decl. Nordrehaug, ¶11. Following the extensive investigation by
12 both Parties, the Parties agreed to engage in private mediation. The Parties attended an
13 all-day mediation on September 29, 2020 before David A. Rotman, a respected and
14 experienced mediator. The mediation included discussion and examination of the
15 Parties' respective positions on the legal and factual issues raised on behalf of the Class.
16 At all times, the Parties' settlement negotiations have been non-collusive, adversarial,
17 and at arm's length. The Parties agreed on the basic terms of a class settlement pursuant
18 to a Memorandum of Understanding executed following the mediation. The Parties then
19 negotiated the final Agreement now submitted for this Court's consideration. Decl.
20 Nordrehaug, ¶12.

21 **IV. THE SETTLEMENT TERMS AND PLAN OF ALLOCATION**

22 **A. The Gross Settlement Amount**

23 To implement the terms of this Settlement, Defendant agrees to pay the Gross
24 Settlement Amount of Two Million Seven Hundred Fifty Thousand Dollars (\$2,750,000)
25 in full and complete satisfaction of the Class Members' Released Claims. (Agreement
26 at ¶ III(A).) The Gross Settlement Amount consists of all payments to Class Members
27 from the Net Settlement Amount, plus (a) the costs of administration of the settlement,
28 (b) all attorneys' fees and costs, (c) service awards to the Plaintiff, and (d) the PAGA

1 Payment. (Agreement at ¶ III(B).) The amount remaining in the Gross Settlement
2 Amount after the deduction of Court-approved amounts for Class Counsel Fees Payment,
3 Class Counsel Litigation Expenses Payment, the Class Representative Service Payments,
4 the PAGA Payment, and the Settlement Administration Costs (called the “Net Settlement
5 Amount”) shall be allocated to Class Members as their Settlement Shares. (Agreement
6 at ¶ I(W) and III(D).) Decl. Nordrehaug, ¶13.

7 **B. Settlement Shares**

8 The Net Settlement Amount shall be divided 41% to the FCRA Class Members
9 (the "FCRA Settlement Amount") and 59% to the California Class Members and
10 Aggrieved Employees (the "California Settlement Amount"). (Agreement at ¶III(B).)
11 From the FCRA Settlement Amount, the Settlement Share for each Participating Class
12 Member in the FCRA Class will be calculated by dividing the FCRA Settlement Amount
13 on an equal per capita basis to each Participating Class Member in the FCRA Class.
14 (Agreement at ¶ III(D)(2).) From the California Settlement Amount, the Settlement
15 Share for each Participating Class Member in the California Class will be calculated by
16 (a) dividing this amount by the total number of workweeks worked by all Participating
17 Class Members in the California Class during the Class Period to determine a dollar
18 amount per workweek ("Workweek Payment"), and (b) multiplying the total number of
19 workweeks worked by each Participating Class Member in the California Class during
20 the Class Period by the Workweek Payment. (Agreement at ¶ III(D)(3).) Decl.
21 Nordrehaug, ¶14.

22 Within fifteen (15) days of the Effective Date, Defendant shall transfer the Gross
23 Settlement Amount to the Settlement Administrator. (Agreement at ¶ III(F)(10).)
24 Thereafter, the distribution of Settlement Shares to Participating Class Members shall
25 by made by the Settlement Administrator within fifteen (15) days after Defendant funds
26 the Gross Settlement Amount. (Agreement at ¶ III(F)(10).) Any checks issued shall
27 remain valid and negotiable for one hundred eighty (180) days, and any funds not
28 distributed after the expiration of the settlement checks will be paid *cy pres* to the

1 National Consumer Law Center for the FCRA Class and to the Legal Aid at Work for
2 the California Class. (Agreement at ¶ III(F)(11).) Decl. Nordrehaug, ¶15.

3 **C. Scope of the Release**

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

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

17 (Agreement at ¶ III(G)(1).) Decl. Nordrehaug, ¶16.

18 **D. Claims Administration**

19 Subject to Court approval, the Parties have agreed on KCC, LLC to administer the
20 settlement in this action ("Settlement Administrator"). (Agreement at ¶ III(E).) The
21 Settlement Administrator has provided an estimate that their fees for administration will
22 not exceed \$70,000. (Agreement at ¶ III(C)(4).) Decl. Nordrehaug, ¶17.

23 **E. Payments to the Plaintiffs and Class Counsel**

24 Class Counsel will apply to the Court for an award of reasonable attorneys' fees
25 in an amount not to exceed one-third (1/3) of the Gross Settlement Amount, and for
26 reimbursement of reasonable expenses in an amount not to exceed \$30,000, subject to
27 Court approval. (Agreement at ¶ III(C)(2). The Plaintiffs will also apply for Court
28 approval of a service award in an amount not to exceed \$10,000 each in consideration

1 for their service as the class representatives. (Agreement at ¶ III(C)(1).) Decl.
2 Nordrehaug, ¶18.

3
4 **V. THE SETTLEMENT MEETS ALL CRITERIA NECESSARY FOR
PRELIMINARY APPROVAL**

5 When a proposed class-wide settlement is reached, the settlement must be
6 submitted to the court for approval. Fed. R. Civ. P. 23(e)(1)(A); 2 H. Newberg & A.
7 Conte, *Newberg on Class Actions* (3d ed. 1992) at §11.41, p.11-87. The Ninth Circuit
8 has declared that a strong judicial policy favors settlement of class actions. *Class*
9 *Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992).

10 Preliminary approval is the first of three steps that comprise the approval
11 procedure for settlements of class actions. See e.g. *Louie v. Kaiser Found. Health Plan,*
12 *Inc.*, 2008 U.S. Dist. LEXIS 78314 (S.D. Cal. 2008). The second step is the
13 dissemination of notice of the settlement to all class members. The third step is a final
14 settlement approval hearing to determine the fairness, adequacy, and reasonableness of
15 the settlement and when class members may be heard regarding the settlement. See
16 *Manual for Complex Litigation*, Second §30.44 (1993).

17 The question presented on a motion for preliminary approval of a proposed class
18 action settlement is whether the proposed settlement is "within the range of possible
19 approval." *Manual for Complex Litigation*, Second §30.44 at 229; *Gautreaux v. Pierce*,
20 690 F.2d 616, 621 n.3 (7th Cir. 1982); *Louie, supra*, at *7. Preliminary approval is
21 merely the prerequisite to giving notice so that "the proposed settlement . . . may be
22 submitted to members of the prospective Class for their acceptance or rejection." *Phila.*
23 *Housing Auth. v. Am. Radiator & Standard Sanitary Corp.*, 323 F. Supp. 364, 372 (E.D.
24 Pa. 1970). There is an initial presumption of fairness when a proposed settlement, which
25 was negotiated at arm's length by Class Counsel, is presented for court approval.
26 *Newberg*, 3d Ed., §11.41, p.11-88. The ultimate question of whether the proposed
27 settlement is fair, reasonable and adequate is made after notice of the settlement is given
28 to the class members and a final settlement hearing is held by the Court.

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

3 “The parties must provide the court with information sufficient to enable it to
4 determine whether to give notice of the propos[ed] [settlement] to the class.” Fed. R.
5 Civ. P., rule 23(e)(1)(A). The approval of a proposed settlement of a class action suit is
6 a matter within the broad discretion of the trial court. *Stanton v. Boeing*, 327 F.3d 938,
7 959 (9th Cir. 2003). Preliminary approval does not require the trial court to answer the
8 ultimate question of whether a proposed settlement is “fair, reasonable and adequate.”
9 *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158 (4th Cir. 1991); *Manual for Complex*
10 *Litigation*, Third, §§ 20.212. At final approval of a settlement, a court is to balance
11 several factors, including: “[i] the strength of the plaintiffs' case; [ii] the risk, expense,
12 complexity, and likely duration of further litigation [and] the risk of maintaining class
13 action status throughout the trial; [iii] the amount offered in settlement; [iv] the extent
14 of discovery completed and the stage of the proceedings; [and] [v] the experience and
15 views of counsel” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998).

16 In considering a potential settlement for preliminary approval purposes, the trial
17 court does not have to reach any ultimate conclusions on the issues of fact and law which
18 underlie the merits of the dispute, and need not engage in a trial on the merits. *Officers*
19 *for Justice v. Civil Serv. Comm'n*, 688 F.2d 615 (9th Cir. 1982), cert. denied, 459 U.S.
20 1217 (1983). The court is not required to determine that certification of a settlement class
21 is appropriate until the final settlement approval. *In re General Motors Corp. Pick-Up*
22 *Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 797 (3d Cir. 1995).

23 The question of whether a proposed settlement is fair, reasonable and adequate
24 necessarily requires a judgment and evaluation by the attorneys for the parties based
25 upon a comparison of “the terms of the compromise with the likely rewards of
26 litigation.” *Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir. 1982), cert. denied 464
27 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders of TMT Trailer*
28 *Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)). Therefore, many courts

1 recognize that the opinion of experienced counsel supporting the settlement is entitled
2 to considerable weight. *Kirkorian v. Borelli*, 695 F. Supp. 446, 451 (N.D. Cal. 1988);
3 *Reed v. General Motors Corp.*, 703 F.2d 170, 175 (5th Cir. 1983); *Weinberger*, 698 F.2d
4 at 74; *Armstrong v. Board of School Directors*, 616 F.2d 305, 325 (7th Cir. 1980); *Fisher*
5 *Bros. v. Cambridge-Lee Indus., Inc.*, 630 F. Supp. 482, 489 (E.D. Pa. 1985).

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

7 A number of factors are to be considered in evaluating a settlement for purposes
8 of preliminary approval. No one factor should be determinative, but rather all factors
9 should be considered. "If the proposed settlement appears to be the product of serious,
10 informed, non-collusive negotiations, has no obvious deficiencies, does not improperly
11 grant preferential treatment to class representatives or segments of the class, and falls
12 within the range of possible approval, then the court should direct that the notice be
13 given to the class members of a formal fairness hearing." *In re Tableware Antitrust*
14 *Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2011). To make this determination, the
15 Court must consider the following factors:

- 16 (A) the class representatives and class counsel have adequately represented
17 the class;
18 (B) the proposal was negotiated at arm's length;
19 (C) the relief provided for the class is adequate, taking into account:
20 (i) the costs, risks, and delay of trial and appeal;
21 (ii) the effectiveness of any proposed method of distributing relief to
22 the class, including the method of processing class-member claims;
23 (iii) the terms of any proposed award of attorneys' fees, including
24 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 Courts also examine the *Hanlon* factors in addition to conducting a
range-of-reasonableness analysis at the preliminary stage, reasoning it is better to closely
scrutinize the settlement terms at the earliest opportunity so that if a fatal flaw exists, it
can be addressed before the parties "waste a great deal of time and money in the notice
and opt-out process." *Millan v. Cascade Water Services, Inc.*, 310 F.R.D. 593 (E.D. Cal.
2015). Here, the settlement satisfies all of these criteria.

1 **1. The Class Representatives and Class Counsel Have Adequately**
2 **Represented the Class**

3 The proposed Class Representatives and Class Counsel have more than adequately
4 represented the Class. The Parties scheduled a private mediation to take place before
5 David A. Rotman, Esq., a respected and experienced mediator for class actions and wage
6 and hour lawsuits. (Decl. Nordrehaug, ¶ 12.) Prior to mediation, Defendant provided
7 to Plaintiffs and Class Counsel payroll and employment data and other information
8 regarding the Class Members, various internal documents, wage statements, earnings and
9 other compensation and employment-related materials, including documents relating to
10 pay, and numerous other documents and information. (Decl. Nordrehaug, ¶ 10.) Class
11 Counsel analyzed the data with the assistance of damages expert Berger Consulting and
12 prepared and submitted a mediation brief to the Mediator. (Decl. Nordrehaug, ¶ 22.)
13 Class Counsel is experienced with these class claims and has settled similar claims on
14 behalf of employees. (Decl. Nordrehaug, ¶29.) Most importantly, Plaintiffs and Class
15 Counsel believe that this settlement is fair, reasonable and adequate and in the best
16 interests of the Class.

17 **2. The Settlement Was Reached Through Arm's Length Negotiations and**
18 **Is the Product of Serious, Informed and Noncollusive Negotiations**

19 This settlement is the result of extensive and hard fought negotiations. Defendant
20 denies each and every one of the claims and contentions alleged in this Action.
21 Defendant has asserted and continues to assert many defenses thereto, and has expressly
22 denied and continues to deny any wrongdoing or legal liability arising out of the conduct
23 alleged in the Action. Settlement negotiations took place between experienced counsel.
24 Counsel for the Parties, after formal mediation and settlement negotiations, reached an
25 agreement based on a mediator's proposal, the experience of counsel and the
26 uncertainties of protracted litigation. Importantly, Plaintiffs and Class Counsel believe
27 that this settlement is fair, reasonable and adequate. Decl. Nordrehaug, ¶19.

28 Class Counsel has conducted a thorough investigation into the facts of the class
action, including a review of relevant documents and data and a diligent investigation

1 of the Class Members' claims against Defendant. Class Counsel also retained an expert
2 to prepare a damage valuation for use in the mediation and negotiations. Class Counsel
3 also has experience in settlements involving similar claims brought on behalf of
4 employees. The parties and their counsel recognize that, in the absence of an approved
5 settlement, they would face a protracted litigation course, including a contested motion
6 for certification, a motion for summary judgment, and trial and appellate proceedings
7 that would consume time and resources and present each of them with ongoing litigation
8 risks and uncertainties. Decl. Nordrehaug, ¶20.

9 Plaintiffs and Class Counsel recognize the expense and length of continuing to
10 litigate and trying this Action against Defendant through possible appeals which could
11 take several years, especially in complex actions such as this litigation. Class Counsel
12 is also mindful of and recognize the inherent problems of proof under, and alleged
13 defenses to, the claims asserted in the Action. Based on the foregoing documents and
14 data, and their own independent investigation and evaluation, Class Counsel is of the
15 opinion that the settlement with Defendant for the consideration and on the terms set
16 forth in the Settlement is fair, reasonable, and adequate in light of all known facts and
17 circumstances, including the risk of significant delay, defenses asserted by Defendant,
18 and numerous potential appellate issues. Decl. Nordrehaug, ¶ 21.

19 Here, the negotiations have been hard-fought and aggressive with capable
20 advocacy on both sides. Accordingly, "[t]here is likewise every reason to conclude that
21 settlement negotiations were vigorously conducted at arms' length and without any
22 suggestion of undue influence." *In re Wash. Public Power Supply System Sec. Litig.*,
23 720 F. Supp. 1379, 1392 (D. Ariz. 1989).

24 **3. The Relief Provided For The Class Is More Than Adequate in Light of**
25 **Value of the Claims, Similar Settlements, and the Risks of Continued**
26 **Litigation**

27 The proposed Settlement herein has no "obvious deficiencies" and is well within
28 the range of possible approval. All Class Members will receive an opportunity to
participate in and receive payment according to the same formula. This Gross Settlement

1 Amount provides an excellent recovery of \$100 per person for the FCRA Class and \$53
2 per workweek for the California Class.

3 In advance of negotiations, Class Counsel received class data concerning
4 employment and payroll information, which permitted Class Counsel to make an
5 intelligent evaluation. Decl. Nordrehaug, ¶22. The calculations to compensate for the
6 amount due for the Class at the time of the mediation were calculated by Berger
7 Consulting, Plaintiffs' damage expert.

8 As to the California Class whose claims are at issue in this Action, Plaintiffs used
9 an expert (Berger Consulting) to analyze the data and determine the potential unpaid
10 wages for the employees. The maximum potential damages were calculated to be
11 \$916,278 for the allegedly underpaid overtime due to the miscalculation of the regular
12 rate, \$1,006,511.25 for meal periods at a 25% violation rate, \$1,006,511.25 for rest
13 period damages at a 25% violation rate, \$903,769.86 for the off-the-clock work at 1 hour
14 per week, minimum wage claim resulting from standby work, and \$351,850 for the
15 unreimbursed cell-phone expenses. Decl. Nordrehaug, ¶22. As a result, the total damage
16 valuation was therefore calculated that Defendant was subject to a maximum damage
17 claim in the amount of \$4,184,920.35. As to potential penalties, Plaintiffs calculated
18 that wage statement penalties were a maximum of \$621,700 and potential waiting time
19 penalties were in a range from \$1,210,082 to \$2,348,983 depending on the derivative
20 claim giving rise to the allegedly unpaid wages. Decl. Nordrehaug, ¶22.

21 Consequently, the California Settlement Amount of \$1,622,500 (59% of the Gross
22 Settlement Amount) represents more than 38% of the value of the damages at issue in
23 this case at the time this Settlement was negotiated, assuming these amounts could be
24 proven at trial. Given the amount of the settlement as compared to the potential value of
25 claims in this case and the defenses asserted by Defendant, this settlement is fair and
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1 reasonable.² Decl. Nordrehaug, ¶22.

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

16 ² See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007)
17 (approving a settlement where the settlement amount constituted approximately 25% of
18 the estimated overtime damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*,
19 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval where
20 “the proposed Total Settlement Amount represents approximately 10% of what class
21 might have been awarded had they succeeded at trial.”); *Dunleavy v. Nadler (In re Mego*
Fin. Corp. Sec. Litig.), 213 F.3d 454, 459 (9th Cir. 2000) (affirming approval of a class
settlement which represented “roughly one-sixth of the potential recovery”).

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 for the Class has been met. Decl. Nordrehaug, ¶22.

2 Where both sides face significant uncertainty, the attendant risks favor settlement.
3 *Hanlon, supra*, 150 F.3d at 1026. "Generally, unless the settlement is clearly inadequate,
4 its acceptance and approval are preferable to lengthy and expensive litigation with
5 uncertain results." *Ching v. Siemens Indus., Inc.*, 2014 U.S. Dist. LEXIS 89002, 2014
6 WL 2926210, at *4 (N.D. Cal. 2014).

7 Here, a number of defenses asserted by Defendant presented serious threats to the
8 claims of Plaintiffs and the other Class Members. Defendant contends that Defendant's
9 employment practices complied with all applicable Labor laws. Defendant argued that
10 federal law preempts the claims because employees worked on a federal enclave.
11 Defendant also argued that the California Supreme Court decision in *Brinker v. Superior*
12 *Court*, 53 Cal. 4th 1004 (2012), weakened Plaintiff's claims, on liability, value, and class
13 certifiability. Finally, several Courts have held that meal and rest period violations do
14 not give rise to wage statement or waiting time penalties. See e.g. *Ling v. P.F. Chang's*
15 *China Bistro, Inc.*, 245 Cal. App. 4th 1242, 1261 (2016). As to the FCRA claim,
16 Defendant argued that because the disclosure document consisted solely of the
17 disclosure, it complied with FCRA in all respects, even though a separate document
18 contained a release. *Coleman v. Kohl's Dep't Stores, Inc.*, 2015 U.S. Dist. LEXIS
19 135746, *17 (N.D. Cal. 2015) (holding a release in a separate document does not violate
20 FCRA); *Luna v. Hansen & Adkins Auto Transp., Inc.*, 2018 U.S. Dist. LEXIS 100055,
21 *18-*19 & n.6 (C.D. Cal. 2018). Finally, the court may find remitter/reduction of the
22 statutory damages appropriate. See e.g. *Klingensmith v. Max & Erma's Restaurants, Inc.*,
23 2007 U.S. Dist. LEXIS 81029, 2007 WL 3118505, at *5 (E.D.Pa. 2007). If successful,
24 Defendant's defenses could eliminate or substantially reduce any recovery to the Class.
25 While Plaintiffs believe that these defenses could be overcome, Defendant maintains
26 these defenses have merit and therefore present a serious risk to recovery. Decl.
27 Nordrehaug at ¶23.

28 Moreover, there was also a significant risk that, if the Action was not settled,

1 Plaintiffs would be unable to obtain class certification and maintain a certified class
2 through trial, and thereby not recover on behalf of any employees other than themselves.
3 At the time of the mediation, Defendant forcefully opposed the propriety of class
4 certification, arguing that individual issues precluded class certification. Further, as
5 demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National*
6 *Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class-wide
7 recovery even where the class has been certified. While other cases have approved class
8 certification in wage and hour claims, class certification in this action would have been
9 hotly disputed and was by no means a foregone conclusion. Decl. Nordrehaug at ¶24.

10 Finally, the proposed method of distribution will be effective as payments will be
11 made automatically to every member of the Class, without the need to submit a claim
12 form. The Agreement sets forth all the terms of Settlement, and there are no other
13 agreements between the Parties that would need to be identified under Rule 23(e)(3).
14 Decl. Nordrehaug, ¶25.

15 After vigorous negotiations, the Parties agreed to the Settlement of \$2,750,000.
16 Recognizing the potential risks, both sides agreed. As the federal court recently held in
17 *Glass*, where the parties faced uncertainties similar to those here:

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

26 Here, the risk of further litigation is substantial.

27 **4. The Settlement Does Not Improperly Grant Preferential Treatment To**
28 **The Class Representative or Segments of The Class**

29 The relief provided in the settlement will benefit all Class Members equally. The
30 settlement does not improperly grant preferential treatment to the Class Representatives
31 or any individual segments of the Class. Each Class Member will be entitled to cash
32 payment based on the plan of allocation. The Settlement Share for each Participating

1 Member in the California Class will be determined based upon the weeks worked by that
2 individual. The Settlement Share for each Participating Member in the FCRA Class will
3 be an equal share per person. Decl. Nordrehaug at ¶14. Plaintiffs will apply to the Court
4 for service awards in consideration for their service and for the risks undertaken on
5 behalf of the class. Plaintiffs performed their duties admirably by working with Class
6 Counsel. See Decl. Nordrehaug at ¶28. At this stage, the requested Plaintiffs' service
7 award is well within the accepted range of awards for purposes of preliminary approval.⁴
8 The Declaration of Nordrehaug at ¶32 provides a long list of Courts across California
9 which have awarded service awards in the amount of \$10,000 or higher, thus establishing
10 that the requested service award in this case is within the range of reasonableness,
11 subject to a final determination by this Court at final approval.

12 Finally, there is no indication of any collusion or preferential treatment. The Ninth
13 Circuit in *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 947 (2011)
14 identified three “subtle signs that class counsel have allowed pursuit of their own
15 self-interests ... to infect the negotiations:” “(1) when counsel receive a disproportionate
16 distribution of the settlement; (2) when the parties negotiate a 'clear sailing' arrangement
17 (i.e., an arrangement where defendant will not object to a certain fee request by class
18 counsel); and (3) when the parties create a reverter that returns unclaimed fees to the
19 defendant.” *Allen v. Bedolla*, 787 F.3d 1218, 1224 (9th Cir. 2015) (quoting *Bluetooth*,

21 ⁴See e.g. *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D.
22 Cal. 2018) (awarding \$12,500 where average class member payment was \$351); *Holman*
23 *v. Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014)
24 (approving \$10,000 service award where class member recovery was \$375); *Louie v.*
25 *Kaiser Foundation Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D.Cal. 2008) (awarding
26 \$25,000 service award to each of six plaintiffs in overtime class action); *Glass v. UBS*
27 *Fin. Servs.*, 2007 WL 221862, *16-17 (N.D.Cal. 2007) (awarding \$25,000 service award
28 in overtime class action and a pool of \$100,000 in enhancements). The payment of
service award to the named plaintiffs in a wage and hour class action is approved by
settled authority in the Ninth Circuit, and the requested amount of \$10,000 is
reasonable in light of the amount approved in *Glass* and the other decisions.

654 F.3d at 947). Here, the facts do not establish any collusion. Class Counsel’s requested fee award is in line with awards in other employment cases. See e.g. *Laffitte v. Robert Half International, Inc.*, 1 Cal. 5th 480 (2016); *Knight v. Red Door Salons, Inc.*, 2009 U.S. Dist. LEXIS 11149, *17 (N.D. Cal. 2009) (“‘nearly all common fund awards range around 30%’”) (quoting *In re Activision Sec. Litigation*, 723 F.Supp. 1373 (N.D. Cal. 1989)); *Ingalls v. Hallmark Mktg. Corp.*, 2009 U.S. Dist. LEXIS 131078 (C.D. Cal.2009) (awarding 33.33% fee on a \$ 5.6 million wage and hour class action); *Birch v. Office Depot, Inc.*, 2007 U.S. Dist. LEXIS 102747 (S.D. Cal. 2007) (awarding a 40% fee on a \$ 16 million wage and hour class action); *Rippee v. Boston Mkt. Corp.*, 2006 U.S. Dist. LEXIS 101136 (S.D. Cal. 2006) (awarding a 40% fee on a \$3.75 million wage and hour class action); *Stuart v. Radioshack Corp.*, 2010 U.S. Dist. LEXIS 92067, *15-18 (N.D. Cal. 2010) (awarding attorneys’ fees amounting to one-third of a \$4.5 million class settlement). Importantly, the Settlement is entirely non-reversionary. The absence of any sign of collusion and the arm’s length negotiations before an experienced mediator all support the approval of the Settlement.

5. The Hanlon Factors Also Support the Settlement

a. The Strength of Plaintiffs’ Case

The Court should “evaluate objectively the strengths and weaknesses inherent in the litigation and the impact of those considerations on the parties’ decisions to reach these agreements.” *Adoma v. Univ. of Phoenix, Inc.*, 913 F.Supp.2d 964, 975 (E.D. Cal. 2012) (citation omitted). In so doing, however, the Court does “not reach ‘any conclusions regarding the contested issues of fact and law that underlie the merits of th[e] litigation.’” *Brewer v. Salyer*, 2017 U.S. Dist. LEXIS 101374, 2017 WL 2813178, at *3 (E.D. Cal. 2017).

Here, Defendant denies all allegations of wrongdoing and allege numerous affirmative defenses relating not only to Plaintiffs’ claims, but also to class certification. Further, Defendant asserts facts that could negate essential elements of Plaintiffs’ claims. Defendant contends, for example, that its employees were able to take meal and rest

1 breaks. In addition, Defendant contends that federal law preempts the claims because
2 of work on a federal enclave. Further, there could be significant problems of proof
3 regarding the extent to which members of the Class missed breaks relating to their
4 employment with Defendant. Decl. Nordrehaug at ¶23. Plaintiffs' willingness to settle
5 this action at a discount to the maximum estimated recovery is not suspect or
6 improvident in light of such considerations. This factor weighs in favor of approval.

7 b. The Risk, Expense, Complexity and Likely Duration of Further
8 Litigation

9 Approval of settlement is "preferable to lengthy and expensive litigation with
10 uncertain results." *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529
11 (C.D. Cal. 2004). Moreover, "[e]mployment law class actions are, by their nature,
12 time-consuming and expensive to litigate." *Aguilar v. Wawona Frozen Foods*, 2017 U.S.
13 Dist. LEXIS 76751, 2017 WL 2214936, at *3 (E.D. Cal 2017).

14 As discussed above, this action involves multiple claims under state and federal
15 law, implicating several aspects of Defendant's operations, including Defendant's
16 payment of overtime wages, the management of meal and rest breaks, and background
17 checks obtained for prospective employees. Even assuming Plaintiffs could show that
18 Defendant had unlawful policies and practices, Plaintiffs would still have to set forth
19 evidence to establish the extent to which a given employee missed breaks and was not
20 paid wages. In addition to increasing the complexity, expense and duration of this
21 litigation, the accumulation of individualized issues would raise a risk of decertification
22 in these proceedings. This factor weighs in favor of approval.

23 c. The Amount Offered in Settlement

24 The amount offered in settlement is generally considered to be one of the most
25 important consideration of any class settlement. See *Kutzman v. Derrel's Mini Storage,*
26 *Inc.*, 2020 U.S. Dist. LEXIS 13314 (E.D. Cal. 2020). "Courts regularly approve class
27 settlements where class members recover less than one quarter of the maximum potential
28 recovery amount." *Kutzman, supra*, 2020 U.S. Dist. LEXIS 13314, at *30.

1 As discussed above the settlement of \$2,750,000.00 represents more than 38% of
2 the value of the damages at issue in this case at the time this Settlement was negotiated,
3 assuming these amounts could be proven at trial. This factor weighs heavily in favor of
4 approval. Decl. Nordrehaug, ¶22.

5 d. The Extent of Discovery Completed

6 Class Counsel has conducted a thorough investigation into the facts of the class
7 action. In advance of mediation, Defendant provided the information necessary for Class
8 Counsel to intelligently negotiate a settlement. Decl. Nordrehaug at ¶26. Class Counsel
9 engaged in a thorough review and analysis of the relevant documents and data with the
10 assistance of an expert, Berger Consulting. Class Counsel was also experienced with the
11 claims at issue here, as Class Counsel previously litigated and settled similar claims in
12 numerous other actions. Accordingly, the agreement to settle did not occur until Class
13 Counsel possessed sufficient information to make an informed judgment regarding the
14 likelihood of success on the merits and the results that could be obtained through further
15 litigation. Decl. Nordrehaug at ¶26.

16 Plaintiffs engaged in a full investigation of the claims with the necessary data and
17 documentation. The Parties then engaged in an all-day mediation, conducted by a
18 mediator with experience in employment class actions, and agreed to settle this action
19 pursuant to the terms and conditions of a proposal provided by the mediator. Based on
20 the foregoing information and data and their own independent investigation and
21 evaluation, Class Counsel is of the opinion that the settlement with Defendant for the
22 consideration and on the terms set forth in the Agreement is fair, reasonable, and
23 adequate, and is in the best interest of the class in light of all known facts and
24 circumstances, including the risk of significant delay, defenses asserted by Defendant,
25 and numerous potential appellate issues. There can be no doubt that Counsel for both
26 parties possessed sufficient information to make an informed judgment regarding the
27 likelihood of success on the merits and the results that could be obtained through further
28 litigation. Decl. Nordrehaug at ¶27.

1 In *Glass*, the Northern District of California recently granted final approval of an
2 overtime and meal wage action although in *Glass* no formal discovery had been
3 conducted prior to the settlement:

4 Here, no formal discovery took place prior to settlement. As the Ninth
5 Circuit has observed, however, "[i]n the context of class action settlements,
6 'formal discovery is not a necessary ticket to the bargaining table' where the
7 parties have sufficient information to make an informed decision about
8 settlement." See *In re Mego Financial Corp. Securities Litigation*, 213 F.3d
9 at 459.

10 2007 U.S. Dist. LEXIS 8476 at *14.

11 Here, Class Counsel was in far better position to evaluate the fairness of this
12 settlement as in *Glass* because they conducted formal discovery and document
13 production, as well as independent investigations, interviews and due diligence to
14 confirm the accuracy of the information supplied by Defendant.

15 **VI. THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT** 16 **PURPOSES**

17 The proposed settlement meets all of the requirements for certifying a settlement
18 class under Fed. R. Civ. Proc. 23(b)(2) as demonstrated below, and therefore, the Court
19 may appropriately approve the Class as defined in the Agreement. This Court should
20 conditionally certify the Class for settlement purposes only which consists of both the
21 California Class and the FCRA Class. The Wage and Hour Class is defined as "all
22 individuals who worked for Defendant in California as non-exempt employees during
23 the California Class Period." The FCRA Class is defined as "all employees or
24 prospective employees of Defendant in the United States for whom Defendant procured
25 a background check during the FCRA Class Period." (Agreement at ¶ I(B).)

26 **A. Rule 23 Of The Federal Rules Of Civil Procedure**

27 Plaintiffs seeks certification of this action for settlement purposes under Federal
28 Rules of Civil Procedure 23(b)(3). This portion of Rule 23 applies to class actions where
"the court finds that the questions of law or fact common to the members of the class
predominate over any questions affecting only individual members, and that a class
action is superior to other available methods for the fair and efficient adjudication of the

1 controversy." Fed. R. Civ. Proc. 23(b)(3).

2 To maintain a class action under Rule 23(b)(3), the four prerequisites of Federal
3 Rules of Civil Procedure 23(a) must first be satisfied. These prerequisites are referred
4 to as numerosity, commonality, typicality, and adequacy of representation, and are set
5 forth in Rule 23(a) as follows:

- 6 (1) the class is so numerous that joinder of all members is impracticable,
- 7 (2) there are questions of law or fact common to the class,
- 8 (3) the claims or defenses of the representative parties are typical of the
claims or defenses of the class, and
- 9 (4) the representative parties will fairly and adequately protect the
interests of the class.

10 The Parties agree that, for purposes of settlement only, these requirements may be
11 satisfied in this case, and therefore, the proposed Class should be certified for purposes
of settlement only.

12 **B. The Numerosity Requirement Is Satisfied**

13 Rule 23(a) merely requires that the class be "so numerous that joinder of all
14 members is impracticable." Fed. R. Civ. Proc. 23(a). "Courts have routinely found the
15 numerosity requirement satisfied when the class comprises 40 or more members."
16 *EEOC v. Kovacevich "5" Farms*, 2007 U.S. Dist. LEXIS 32330 at *57 (E.D. Cal. 2007);
17 see also *Slaven v. BP Am., Inc.*, 190 F.R.D. 649, 654 (C.D. Cal. 2000); *Ansari v. New*
18 *York Univ.*, 179 F.R.D. 112, 114 (S.D.N.Y. 1998). Here, the Class is composed of
19 approximately 772 individuals in the California Class and 7,205 in the FCRA Class,
20 which is sufficiently numerous for settlement purposes. Decl. Nordrehaug at ¶28.

21 **C. Common Questions Of Law And Fact Bind The Class**

22 Rule 23(a) requires that there be a common question of law or fact. Rule 23(a) is
23 satisfied where "the course or conduct giving rise to the cause of action affects all class
24 members, and at least one of the elements of that cause of action is shared by all of the
25 class members." *Lockwood Motors, Inc. v. General Motors Corp.*, 162 F.R.D. 569, 575
26 (D. Minn. 1995). This requirement is met if common questions of liability are present,
27 even if there may be individual variations. *Hanlon, supra*, 150 F.3d at 1019; *Kurihara*
28

1 v. *Best Buy Co.*, 2007 U.S. Dist. LEXIS 64224, *17 (N.D. Cal. 2007).

2 Here, Plaintiffs contend that common questions of law and fact are present, and
3 specifically the common questions of whether Defendant's employment practices were
4 lawful, whether Defendant miscalculated the regular rate when paying overtime, whether
5 Defendant failed to properly provide and/or pay for meal and rest periods, whether
6 Defendant failed to properly provide reimbursement for cell phone usage, whether
7 Defendant violated the FCRA in using the consent forms, whether Defendant's conduct
8 was willful, and whether the Class is entitled to compensation and related penalties.
9 Certification of this Class is appropriate because Defendant engaged in uniform practices
10 with respect to the Class Members. As a result, these common questions of liability
11 could be answered on a class wide basis. Decl. Nordrehaug at ¶28. While Defendant
12 disputes that commonality can be established, Defendant does not oppose a finding of
13 commonality for purposes of this Settlement only

14 **D. The Plaintiffs' Claims Are Typical Of The Class Claims**

15 The typicality requirement of Rule 23(a) requires that the members of the class
16 have the same or similar claims as the named plaintiff. "The typicality requirement is
17 met when the claims of the named plaintiff arise from the same event or are based on the
18 same legal theories." *Tate v. Weyerhaeuser Co.*, 723 F.2d 598, 608 (8th Cir. 1983). In
19 *Hanlon v. Chrysler Co.*, 150 F.3d 1011 (9th Cir. 1998), the Ninth Circuit held that
20 "[u]nder the rule's permissive standards, representative claims are 'typical' if they are
21 reasonably coextensive with those of absent class members; they need not be
22 substantially identical." 150 F.3d at 1020. Typicality "does not mean that the claims of
23 the class representative[s] must be identical or substantially identical to those of the
24 absent class members." *Stanton, supra*, at 957.

25 In the instant case, there can be little doubt that the typicality requirement is fully
26 satisfied. Plaintiffs, like every other member of the FCRA Class, were subject to the
27 Defendant's practice concerning the background check consent form. Plaintiffs were
28 employed by Defendant as non-exempt employees and, like every other member of the

1 California Class, was subject to the same employment practices concerning meal and rest
2 periods. Plaintiffs, like every other member of the Class, also claim compensation as a
3 result of the Defendant's uniform policies and practices. Thus, the claims of Plaintiffs
4 and the members of the Class arise from the same course of conduct by Defendant,
5 involve the same issues, and are based on the same legal theories. Decl. Nordrehaug at
6 ¶ 28. The typicality requirement of Rule 23 is met as to the common issues presented.
7 While Defendant disputes that Plaintiffs has typical claims, Defendant does not oppose
8 a finding of typicality for purposes of this Settlement only.

9 **E. The Class Representative Has Fairly And Adequately Protected**
10 **The Interests Of The Class**

11 Plaintiffs provided adequate representation of the interests of the class in that: (a)
12 their attorneys are competent, experienced in class litigation and generally able to
13 conduct the proposed litigation; and (b) the Plaintiffs do not have interests antagonistic
14 to those of the class. *White v. Local 942*, 688 F.2d 85 (9th Cir. 1982). Simply put, Rule
15 23 asks whether the Class Representative will vigorously prosecute the action on behalf
16 of the class and have a basic understanding of the claims. This requirement has been met
17 here. First, Plaintiffs are well aware of their duties as the representatives of the Class and
18 have actively participated in the prosecution of this case to date. Plaintiffs effectively
19 communicated with Class Counsel, provided documents and information to Class
20 Counsel, and participated extensively in the investigation of the Action. The personal
21 involvement of the Plaintiffs was essential to the prosecution of the Action and the
22 monetary settlement reached. Decl. Nordrehaug at ¶28. Second, Plaintiffs retained
23 competent counsel with extensive experience in class actions. See Decl. Nordrehaug at
24 ¶29 and Exhibit #2. Third, there is no antagonism between the interests of Plaintiffs and
25 those of the Class. Both Plaintiffs and the Class Members seek monetary relief under
26 the same set of facts and legal theories. Under such circumstances, there can be no
27 conflicts of interest, and adequacy of representation is presumed. *In re Wirebound Boxes*
28 *Antitrust Lit.*, 128 F.R.D. 268 (D. Minn. 1989). While Defendant disputes that Plaintiff

1 are adequate, Defendant does not oppose a finding that Plaintiffs are adequate to
2 represent the Class for settlement purposes only.

3 **F. The Additional Requirements Of Rule 23 Are Satisfied**

4 Since the requirements of Rule 23(a) have been satisfied, the Court now looks to
5 Rule 23(b)(3) in order to determine whether a class should be maintained under one of
6 the listed categories. Under Rule 23(b)(3), a class action may be maintained if two basic
7 conditions are met. First, common questions must predominate over individual issues,
8 and second, the class action must be superior to available other methods for the fair and
9 efficient adjudication of the controversy.

10 **1. The Predominance Requirement Is Met**

11 Rule 23(b)(3) provides that a class may be maintained if "the court finds that the
12 questions of law and fact common to the members of the class predominate over any
13 questions affecting only individual members." A company-wide policy or practice can
14 establish predominance. *Kurihara*, 2007 U.S. Dist. LEXIS 64224, at *27. Where there
15 exist "broad employer policies [which] can impact many workers at once ... a need for
16 class treatment" is often present. *Sepulveda v. Wal-Mart Stores, Inc.*, 237 F.R.D. 229,
17 247 (C.D. Cal. 2006).

18 Here, Plaintiffs contend that the adjudication of the common issues surrounding
19 Defendant's uniform and systematic employment policies applicable to non-exempt
20 employees and background checks could establish Defendant's liability on a class-wide
21 basis. Plaintiffs contend that Defendant engaged in a uniform course of failing to
22 properly pay for overtime and provide meal/rest periods and expense reimbursement for
23 cell phone usage which resulted in a systematic failure to provide compensation as
24 required by law and that Defendant's policies with respect to these issues are uniform.
25 The only question is whether Defendant's conduct supports a meritorious claim for
26 liability. Accordingly, Plaintiffs maintain that the common issues of law and fact present
27 in this case predominate. Decl. Nordrehaug at ¶ 28. While Defendant disputes that the
28 predominance requirement may be satisfied for purposes of a litigation class, Defendant

1 does not oppose such a finding for purposes of this Settlement only.

2 **2. The Superiority Requirement Is Met**

3 To certify a class, the Court must also determine "that a class action is superior to
4 other available methods for the fair and efficient adjudication of the controversy." Fed.
5 R. Civ. Proc. 23(b)(3). "Where classwide litigation of common issues will reduce
6 litigation costs and promote greater efficiency, a class action may be superior to other
7 methods of litigation." *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir.
8 1996). Here, a class action is the superior mechanism for the settlement of the claims as
9 pled by Plaintiffs. While Defendant disputes that the superiority requirement may be
10 satisfied, Defendant does not oppose such a finding for purposes of this Settlement only.

11 **VII. THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE**

12 The Parties have agreed upon procedures by which the Class will be provided with
13 written notice of the Settlement similar to that approved and utilized in hundreds of class
14 action settlements. The Parties have jointly drafted a Class Notice, attached to the
15 Agreement as Exhibit 1 and is hereby submitted for approval.

16 The Class Notice includes information regarding the nature of the Action; a
17 summary of the substance of the Settlement, including Defendant's denial of liability;
18 the definition of the Class; the procedure and time period for objecting to the Settlement,
19 exclusion from the Settlement and participating in the Settlement; a statement that the
20 District Court has preliminarily approved the Settlement; and information regarding the
21 calculation of settlement shares. See Exhibit A to the Agreement.

22 The Class Notice explains that Class Members who wish to participate in the
23 settlement do not have to anything to claim their share of the Settlement. The Class
24 Notice also provides that any Class Member may choose to opt out of the Class, and that
25 any such person who chooses to opt out of the Class will not be entitled to any recovery
26 obtained by way of the settlement and will not be bound by the settlement. The Class
27 Notice explains that all objections to the Settlement by members of the Class must be
28 submitted to the Court no later than forty-five (45) days from the mailing of the Notice.

1 All objections must state with particularity the basis on which they are asserted. In
2 accordance with *Mercury Interactive Corp. Secs. Litig. v. Mercury Interactive Corp.*, 618
3 F.3d 988 (9th Cir 2010), the application for attorneys' fees and costs will be filed before
4 the end of the objection period and posted on a website as indicated in the Class Notice.
5 Thus, all Class Members will have ample opportunity to review and comment on the
6 attorneys' fees before the objection deadline and the motion for attorneys' fees will be
7 heard at the Final Approval Hearing. Decl. Nordrehaug at ¶30.

8 The Class Notice also informs members of the Class about the release applicable
9 to the FCRA Class and the California Class, respectively. This notice program was
10 designed to meaningfully reach the largest possible number of potential Class Members.
11 The notice program also provides for the use of emails and electronic media to locate
12 Class Members. The mailing and distribution of the Class Notice satisfies the
13 requirements of due process, and is the best notice practicable under the circumstances
14 and constitutes due and sufficient notice to all persons entitled thereto. Decl.
15 Nordrehaug at ¶31. This notice satisfies the content requirements for notice following
16 the exemplar class notice in the *Manual for Complex Litigation*, Second §41.43. This
17 notice also fulfills the requirement that Class notices be neutral. *Newberg*, at §8.39.

18 **VIII. CONCLUSION**

19 Counsel for the Parties have committed substantial amounts of time, energy, and
20 resources litigating and ultimately settling this case. In the judgment of Plaintiffs and
21 Class Counsel, the proposed settlement is a fair and reasonable compromise of the issues
22 in dispute in light of the strengths and weaknesses of each party's case. After weighing
23 the certain and immediate benefits of these settlements against the uncertainty of trial,
24 and appeal, Plaintiffs believe the proposed settlement is fair, reasonable and adequate,
25 and warrants this Court's preliminary approval. Accordingly, Plaintiffs respectfully
26 request that the Court preliminarily approve the proposed settlement, enter the proposed
27 Preliminary Approval Order submitted herewith, and schedule a Final Approval Hearing
28 that is 120 days from the date of the Preliminary Approval Order.

1 Dated: February 18, 2021

2 BLUMENTHAL NORDREHAUG BHOWMIK
3 DE BLOUW LLP

4 By: /s/ Kyle Nordrehaug
5 Norman B. Blumenthal
6 Kyle R. Nordrehaug
7 Attorneys for Plaintiffs
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