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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES**

IRIS ASTUDILLO, an individual,
CRYSTAL DELGADO, an individual, on
behalf of herself and all others similarly
situated,

Plaintiffs,

vs.

TORRANCE HEALTH ASSOCIATION,
INC., a California Corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 20STCV18424

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

Hearing Date: November 15, 2023
Hearing Time: 9:00 a.m.
*[Hearing scheduled by Order dated July 3, 2023 at
paragraph 14]*

Judge: Hon. Elihu M. Berle
Dept.: SS-6

Action Filed: May 11, 2020
Trial Date: Not set

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	THE SETTLEMENT BEFORE THE COURT	1
III.	GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL OF CLASS ACTION SETTLEMENTS.....	5
IV.	THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE.....	6
A.	The Settlement Satisfies the California Test for Fairness.....	7
1.	The Investigation and Analysis of Documents are Sufficient to Allow Counsel and the Court to Act Intelligently	7
2.	The Settlement was Reached Through Arm's Length Bargaining	7
3.	Class Counsel is Experienced in Similar Litigation	8
4.	To Date, There Are No Objections and No Opt-Outs.	8
5.	The Strength of Plaintiffs' Case	9
6.	The Risk, Expense, Complexity, and Likely Duration of Further Litigation	12
7.	The Amount Offered in Settlement.	13
V.	CONCLUSION.....	15

TABLE OF AUTHORITIES

	Cases:	Page:
1		
2		
3	<i>7-Eleven Owners for Fair Fran. v. Southland Corp.</i> ,	
4	85 Cal. App. 4 th 1135 (2000).....	5
5	<i>Aceves v. Autozone Inc.</i>	
6	No. 5:14-cv-2032, ECF No. 58 (C.D. Cal. 2016)	14
7	<i>Alberto v. GMRI, Inc.</i> ,	
8	252 F.R.D. 652 (E.D. Cal. Jun 24, 2008)	8
9	<i>Bailes v. Lineage Logistics, LLC</i> ,	
10	2016 U.S. Dist. LEXIS 110943 (D. Kan 2016)	14
11	<i>Barcia v. Contain-A-Way, Inc.</i> ,	
12	2009 U.S. Dist. LEXIS 17118 (S. D. Cal. 2009)	11
13	<i>Brinker v. Superior Court</i> ,	
14	53 Cal. 4th 1004 (2012)	10
15	<i>Browning v. Yahoo!, Inc.</i> ,	
16	2007 U.S. Dist. LEXIS 86266 (N.D. Cal. Nov. 16, 2007)	11
17	<i>Cellphone Termination Fee Cases</i> ,	
18	180 Cal. App. 4th 1110 (2009)	6
19	<i>Coleman v. Kohl's Dep't Stores, Inc.</i> ,	
20	2015 U.S. Dist. LEXIS 135746 (N.D. Cal. 2015)	10
21	<i>Dunk v. Ford Motor Co.</i> ,	
22	48 Cal. App. 4th 1794 (1996)	5, 6
23	<i>Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)</i> ,	
24	213 F.3d 454 (9 th Cir. 2000)	15
25	<i>Duran v. U.S. Bank National Assn.</i> ,	
26	59 Cal. 4th 1 (2014)	11
27	<i>Feist v. Petco Animal Supplies, Inc.</i> ,	
28	2018 U.S. Dist. LEXIS 98686 (S.D. Cal. 2018)	14
	<i>Glass v. UBS Fin. Servs.</i> ,	
	2007 U.S. Dist. LEXIS 8476; 15 Wage & Hour Cas. 2d (BNA) 1330 (N.D. Cal. 2007);	
	<i>aff'd</i> 2009 U.S. App. LEXIS 10328 (9 th Cir. May 14, 2009)	7, 12, 15
	<i>Hanlon v. Chrysler Corp.</i> ,	
	150 F.3d 1011 (9 th Cir. 1998)	9
	<i>Hopson v. Hanesbrands Inc.</i> ,	
	2009 U.S. Dist. LEXIS 33900 (N.D. Cal. 2009)	10

1	<i>Huens v. Tatum,</i>	
2	52 Cal. App. 4 th 259 (1997).....	5
3	<i>In re Austrian & German Bank Holocaust Litigation,</i>	
4	80 F. Supp. 2d 164 (S.D.N.Y. 2000).....	9
5	<i>Klingensmith v. Max & Erma's Restaurants, Inc.,</i>	
6	2007 U.S. Dist. LEXIS 81029, 2007 WL 3118505 (E.D.Pa. 2007).....	10
7	<i>Kullar v. Foot Locker Retail, Inc.,</i>	
8	168 Cal. App. 4 th 116 (2008).....	6
9	<i>Landrum v. Acadian Ambulance Serv., Inc.,</i>	
10	No. 14-cv-1467, ECF No. 37 (S.D. Tex. 2015).....	14
11	<i>Laskey v. Int'l Union,</i>	
12	638 F.2d 954 (6 th Cir. 1981).....	9
13	<i>Ling v. P.F. Chang's China Bisto, Inc.,</i>	
14	245 Cal. App. 4 th 1242 (2016).....	14
15	<i>Louie v. Kaiser Foundation Health Plan, Inc.,</i>	
16	2008 U.S. Dist. LEXIS 78314 (S.D. Cal. 2008).....	11
17	<i>Luna v. Hansen & Adkins Auto Transp., Inc.,</i>	
18	2018 U.S. Dist. LEXIS 100055 (C.D. Cal. 2018).....	10
19	<i>Ma v. Covidien Holding, Inc.,</i>	
20	2014 WL 2472316, (C.D. Cal. 2014).....	15
21	<i>Maldonado v. Epsilon Plastics, Inc.,</i>	
22	22 Cal. App. 5 th 1308 (2018).....	14
23	<i>Malibu Outrigger Bd. of Governors v. Superior Court,</i>	
24	103 Cal. App. 3 ^d 573 (1980).....	5
25	<i>Moore v. Aerotek, Inc.,</i>	
26	2017 WL 2838148 (S.D. Ohio 2017).....	14
27	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles,</i>	
28	186 Cal. App. 4 th 399 (2010).....	6
	<i>Nordstrom Commission Cases,</i>	
	186 Cal. App. 4 th 576 (2010).....	14
	<i>Officers for Justice v. Civil Service Com'n,</i>	
	688 F.2d 615 (9 th Cir. 1982).....	6
	<i>Patrick v. Interstate Mgmt. Co., LLC,</i>	
	No. 8:15-cv-1252, ECF No. 42 (M.D.Fla. 2016).....	14
	<i>Pietras v. Sentry Ins. Co.,</i>	
	513 F. Supp. 2d 983 (N.D. Ill 2007).....	14

1	<i>Stoetzner v. U.S. Steel Corp.</i> ,	
2	897 F.2d 115 (3d. Cir. 1990).....	9
3	<i>Stovall-Gusman v. W.W. Granger, Inc.</i> ,	
4	2015 U.S. Dist. LEXIS 78671 (N.D. Cal. 2015)	15
5	<i>Viceral v. Mistras Grp., Inc.</i> ,	
6	2016 WL 5907869 (N.D. Cal. 2016)	15
7	<i>Walker v. McClane/Midwest, Inc.</i> ,	
8	No. 2:14-cv-04315, ECF No. 29 (W.D. Mo. 2015)	14
9	<i>Wershba v. Apple Computer</i> ,	
10	91 Cal. App. 4 th 224 (2001).....	5

Statutes, Rules and Regulations:

Cal. Labor Code §203.....	13, 14
Cal. Labor Code §226.....	13, 14

1 **I. INTRODUCTION**

2 The parties to this action have reached a Settlement and the Court preliminarily approved the
3 Class Action, Collective Action and PAGA Settlement Agreement (the “Agreement”), a true and correct
4 copy of which is attached as Exhibit #2 to the Declaration of Norman Blumenthal (“Blumenthal
5 Decl.”).¹ In accordance with the Preliminary Approval Order dated July 3, 2023 (“Preliminary
6 Approval Order”), the approved Class Notice has been disseminated to the Class.²

7 The purpose of this hearing is to determine whether the proposed settlement of the litigation
8 should be finally approved. Plaintiffs Iris Astudillo and Crystal Delgado (“Plaintiffs”) respectfully
9 submit this memorandum in support of the unopposed motion for final approval and the proposed entry
10 of the Final Approval Order and Judgment, submitted herewith. The settlement represents an excellent
11 result for the Class and avoids the delays, risks, and costs of further litigation. The Class Notice was
12 disseminated to the Class and while the notice process is ongoing, the final results will be provided to
13 the Court in advance of the final approval hearing. Blumenthal Decl. ¶4. Plaintiffs respectfully submit
14 that the class settlement should be finally approved for the same reasons that the Court preliminarily
15 approved the settlement as fair, reasonable, and adequate.

16 **II. THE SETTLEMENT BEFORE THE COURT**

17 Plaintiffs and Defendant Torrance Health Association, Inc. (“Defendant”) reached a full and
18 final settlement of the above-captioned action, which is embodied in the Agreement filed concurrently
19 with the Court. As consideration for this Settlement, the Gross Settlement Amount is One Million
20 Seventy-Three Thousand Twenty-Five Dollars and Zero Cents (\$1,073,025.00) (the “Gross Settlement
21 Amount”) (Agreement at ¶ 1.28), of which Defendant has already paid \$73,025 for individual
22

23 ¹ Capitalized terms are defined in the Agreement.

24 ² The “Class” consists of both the “Wage and Hour Class” and the “Background Check Class.” The
25 “Wage and Hour Class” is defined as “all individuals who are or previously were employed by
26 Defendant in California and classified as a nonexempt employee at any time during the Wage and Hour
27 Class Period.” The “Wage and Hour Class Period” is May 11, 2016 to February 21, 2023. The
28 “Background Check Class” is defined “all individuals who executed Defendant’s background check
 disclosure form at any time during the Background Check Class Period.” The “FCRA Class Period” is
 May 11, 2013 to February 21, 2023. (Preliminary Approval Order, ¶ 5)

1 settlement agreements to Class Members, and Defendant shall pay out the additional total sum of
2 \$1,000,000, as set forth in the Agreement. The Gross Settlement Amount will settle all issues pending
3 in the Action between the Parties and will settle the Released Class Claims in exchange for the
4 payments to Participating Class Members from the Net Settlement Amount. The Gross Settlement
5 Amount includes (a) the costs of administration of the settlement, (b) all attorneys' fees and costs, (c)
6 Class Representative Service Payments, and (d) the PAGA Penalties payment allocated 75% to the
7 LWDA and 25% to the Aggrieved Employees. (Agreement at ¶ 1.28.) The Gross Settlement Amount
8 does not include the employer's share of payroll taxes which will be separately paid by Defendant.
9 (Agreement at ¶ 3.1.) Blumenthal Decl. ¶3(a).

10 The following are the key financial terms of the Settlement and the proposed deductions:

11 **\$1,073,025 (Gross Settlement Amount)**

- 12 - \$73,025 (Defendant already paid for individual settlements)
- 13 - \$20,000 (Plaintiffs' proposed service award not to exceed \$10,000 each)
- 14 - \$95,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- 15 - \$333,333 (Class Counsel Fees Payment - not to exceed 1/3 of settlement)
- 16 - \$20,000 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
- 17 - \$30,000 (Administration Expenses Payment - not to exceed amount)
- 18 - \$78,100 (Background Check Class payments - \$50 per person)

19 **\$423,567 (Net Settlement Amount)**

20 The Gross Settlement Amount shall be all-in with no reversion to Defendant. (Agreement at ¶ 3.1.)
21 Blumenthal Decl. ¶3(b).

22 Within fourteen (14) days of the Effective Date, Defendant shall fund the Gross Settlement
23 Amount and the amount necessary to pay Defendant's share of payroll taxes. (Agreement at ¶ 4.3.) The
24 distribution of Individual Class Payments to Participating Class Members along with the other Court-
25 approved distributions shall be made by the Administrator within fourteen (14) days after Defendant
26 funds the Gross Settlement Amount. (Agreement at ¶ 5.1.) Blumenthal Decl. ¶3(c).

27 The amount remaining in the Gross Settlement Amount after the deduction of Court-approved
28 amounts for Individual PAGA Payments, the LWDA PAGA Payment, the Class Representative Service
Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, the
Administration Expenses Payment, Background Check Class Payments, and the \$73,025 already paid
by Defendant (called the "Net Settlement Amount") shall be allocated to Class Members as their

1 Individual Class Payments. (Agreement at ¶¶ 1.34 and 3.2.) From the Net Settlement Amount, the
2 Individual Class Payment for each Participating Class Member will be calculated by (a) dividing the
3 Net Settlement Amount by the total number of Workweeks worked by all Participating Wage and Hour
4 Class Members during the Class Period and (b) multiplying the result by each Participating Wage and
5 Hour Class Member's Workweeks. (Agreement at ¶ 3.2(e).) Workweeks will be based on Defendant's
6 records, however, Class Members will have the right to challenge the number of Workweeks. The
7 Background Check Class Payments will be paid out at a flat rate of \$50 per individual. (Agreement at
8 ¶ 3.2(d).) Blumenthal Decl. ¶ 3(d).

9 Class Members were sent the Court approved Class Notice using the procedure approved by the
10 Court by mailing the notice packets after updating class members' addresses using the National Change
11 of Address database and, for any notice packets returned as undeliverable, re-mailing such notices to
12 any forwarding address provided or updated address located. (Agreement at ¶ 8.5, Ex. A.) Class
13 Members were provided with the opportunity to exclude themselves or "opt out" if they did not want
14 to participate in the settlement. (Agreement at ¶ 8.5 (c), Ex. A.) All Aggrieved Employees, including
15 those who submit an opt-out request, will still be paid their allocation of the PAGA Penalties and will
16 remain subject to the release of the Released PAGA Claims regardless of their request for exclusion.
17 (Agreement at ¶¶ 6.3 and 8.5(d).) The Class Notice also advised Class Members of their right to object
18 to the Settlement and/or dispute their workweeks. (Agreement at ¶¶ 8.6 and 8.7, Ex. A.) Blumenthal
19 Decl. ¶ 3(e).

20 A Participating Class Member must cash his or her Individual Class Payment check within 180
21 days after it is mailed. (Agreement at ¶ 5.2.) The Settlement Administrator will send a reminder to
22 Participating Class Members who have not cashed their checks within 120 days after its last mailing
23 to the affected individual. (Agreement at ¶ 5.2.) Any settlement checks not cashed within 180 days will
24 be voided and any funds represented by such checks to the California Controller's Unclaimed Property
25 Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements
26 of C.C.P. § 384(b). (Agreement at ¶ 5.4.) Blumenthal Decl. ¶ 3(f).

27 Phoenix Class Action was appointed as the Administrator. (Agreement at ¶ 8.1; Preliminary
28

1 Approval Order at ¶ 11.) From the Gross Settlement Amount, The Administrator will be paid for
2 settlement administration in an amount not to exceed \$30,000. (Agreement at ¶ 3.2(c); Preliminary
3 Approval Order at ¶ 11.) The final amount for Settlement Administration Expenses, including fees and
4 costs incurred to-date, will be set forth in the forthcoming declaration of the Administrator. Blumenthal
5 Decl. ¶3(g).

6 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
7 to exceed \$333,333 as the Class Counsel Fees Payment, which is one-third of \$1,000,000. (Agreement
8 at ¶ 3.2(b).) Class Counsel will also be allowed to apply separately for an award of Class Counsel
9 Litigation Expenses Payment in an amount not to exceed \$95,000. (Agreement at ¶ 3.2(b).) Subject
10 to Court approval, the Agreement provides for a payment of no more than \$10,000 each to the Plaintiffs
11 as the Class Representative Service Payments. (Agreement at ¶ 3.2(a).) In support of this separate
12 motion for attorneys' fees, reimbursement of expenses and service award, Class Counsel is providing
13 evidentiary support, for these requests, including lodestar. Blumenthal Decl. ¶3(h).

14 Subject to Court approval, the PAGA Penalties will be paid from the Gross Settlement Amount
15 for PAGA penalties under the California Private Attorneys General Act, Cal. Labor Code Section 2698,
16 *et seq.* ("PAGA"). The PAGA Penalties are \$20,000. (Agreement at ¶¶ 1.34 and 3.2(g).) Pursuant to
17 the express requirements of Labor Code § 2699(i), the PAGA Payment shall be allocated as follows:
18 75% shall be allocated to the Labor Workforce Development Agency ("LWDA") as its share of the civil
19 penalties and 25% allocated to the Individual PAGA Payments to be distributed to the Aggrieved
20 Employees based on the number of their respective PAGA Pay Periods. (Agreement at ¶ 3.2(g).) As set
21 forth in the accompanying proof of service, the LWDA has been served with this motion and the
22 Agreement. Blumenthal Decl. ¶3(i).

23 The Settlement is fair, adequate and reasonable to the class and should be finally approved for
24 the same reasons the Court granted preliminary approval of the Settlement, agreeing that the settlement
25 is "fair, adequate and reasonable". (Preliminary Approval Order at ¶ 3.) In sum, the Settlement valued
26 at One Million Seventy-Three Thousand Twenty-Five Dollars and Zero Cents (\$1,073,025.00) is an
27 excellent result for the Class. This result is particularly favorable in light of the fact that liability was
28

1 far from certain in light of the defenses asserted by Defendant. Given the complexities of this case and
2 the defenses asserted, along with the uncertainties of proof at trial and appeal, the proposed settlement
3 is fair, reasonable and adequate, and should be finally approved. Blumenthal Decl. ¶3(j).

4 **III. GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL**
5 **OF CLASS ACTION SETTLEMENTS**

6 Settlements of disputed claims are favored by the courts. *Huens v. Tatum*, 52 Cal. App. 4th 259,
7 265 (1997). In evaluating settlements, the courts have long recognized that compromise is particularly
8 appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*
9 *v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) ("[V]oluntary conciliation and settlement are
10 the preferred means of dispute resolution. This is especially true in complex class action litigation.")

11 "[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
12 action requires court approval." *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996) (citing
13 *Malibu Outrigger Bd. of Governors v. Superior Court*, 103 Cal. App. 3d 573, 578-579 (1980).) The
14 court must decide whether the proposed settlement falls within the range of reasonable settlements,
15 taking into account that settlements are compromises between the parties reflecting subjective,
16 unquantifiable judgments concerning the risks and possible outcomes of litigation. *See Wershba v.*
17 *Apple Computer*, 91 Cal. App. 4th 224, 246 (2001) ("The proposed settlement is not to be judged
18 against a hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed
19 at trial.") In *Wershba*, appellants argued that the settlement was too low given the "clear" liability,
20 however, the Court rejected this argument and held that "the merits of the underlying class claims are
21 not a basis for upsetting the settlement of a class action." *Id.*; *see also 7-Eleven, supra*, at 1150.

22 In these cases, courts have repeatedly emphasized that there is a strong initial presumption that
23 the compromise is fair and reasonable. *Wershba*, 91 Cal. App. 4th at 245. Courts should not substitute
24 their judgment for that of the parties who negotiated the settlement. *Id.* at 246. The presumption of
25 fairness exists where: (1) investigation and discovery are sufficient to allow counsel and the court to
26 act intelligently; (2) the settlement is reached through arm's-length bargaining; (3) counsel is
27 experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk*, 48 Cal. App. 4th
28 at 1801, citing Newberg & Conte, *Newberg on Class Actions*, (3d ed. 1992) §11.41, pp. 11-91. Here,

1 all of these factors support a presumption of fairness. The essential evaluation is whether, given the
2 risks of litigation and the range of probable results, the settlement, taken as a whole, is fair, reasonable
3 and adequate to all concerned. Here, the facts and circumstances compel the conclusion that the
4 proposed settlement satisfies that standard and should be finally approved.

5 **IV. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE**

6 The Court must determine whether the settlement is fair, adequate, and reasonable. *Dunk v.*
7 *Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996); *see also Officers for Justice v. Civil Service*
8 *Com'n*, 688 F.2d 615, 625 (9th Cir. 1982). The purpose of the requirement is "the protection of those
9 class members, including the named plaintiffs, whose rights may not have been given due regard by the
10 negotiating parties." *Dunk, supra*, at 1801.

11 The trial court has broad discretion to determine whether the settlement is fair. *Cellphone*
12 *Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117 (2009). "The well-recognized factors that the
13 trial court should consider in evaluating the reasonableness of a class action settlement agreement
14 include 'the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further
15 litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the
16 extent of discovery completed and the stage of the proceedings, the experience and views of counsel,
17 the presence of a governmental participant, and the reaction of the class members to the proposed
18 settlement.'" *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008) (internal citations
19 omitted); *see also Munoz v. BCI Coca-Cola Bottling Co. of L. A.*, 186 Cal. App. 4th 399, 408 (2010).

20 The list of factors is not exhaustive and should be tailored to each case. *Dunk, supra*, at 1801.
21 Due regard should be given to what is otherwise a private consensual agreement between the parties.
22 *Id.* The inquiry "must be limited to the extent necessary to reach a reasoned judgment that the
23 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties,
24 and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Id.*
25 "Ultimately, the [trial] court's determination is nothing more than 'an amalgam of delicate balancing,
26 gross approximations and rough justice.' [Citation omitted.]" *Id.*

27 These factors are analyzed seriatim below, and all support final approval of the class action
28 settlement before this Court, consistent with this Court's Preliminary Approval Order.

1 **A. The Settlement Satisfies the California Test for Fairness**

2 1. The Investigation and Analysis of Documents are Sufficient to Allow Counsel
3 and the Court to Act Intelligently

4 Over the course of litigation, the Parties engaged in the investigation of the claims, including
5 formal discovery, production of documents, class data, and other information, allowing for the full and
6 complete analysis of liabilities and defenses to the claims in this Action. The procedural history and
7 investigation performed was detailed at length in support of the motion for preliminary approval. The
8 Settlement was the product of one arms-length mediation and contentious negotiations presided over
9 by Jeffrey Krivis, Esq., a respected and experience mediator of wage and hour class actions. The details
10 of the litigation are set forth in the Blumenthal Decl. at ¶¶ 6(a)-6(g).

11 2. The Settlement was Reached Through Arm's Length Bargaining

12 This Settlement is the result of extensive and hard-fought litigation as well as negotiations
13 before an experienced and well-respected mediator. Defendant has expressly denied and continue to
14 deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiffs and
15 Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released
16 Class Claims of the Class in accordance with this Settlement. Class Counsel are experienced and
17 qualified to evaluate the class claims, the viability of the defenses asserted, and the risks and benefits
18 of trial and settlement, and Class Counsel are experienced in wage and hour employment law class
19 actions, as Class Counsel has previously litigated and certified similar claims against other employers.
20 Blumenthal Decl. ¶7(a).

21 The Parties attended an arms-length mediation session with Jeffrey Krivis, Esq., a respected and
22 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
23 for the mediation sessions, Defendant provided Class Counsel with necessary information for the
24 members of the Class, including time data, payroll data and data concerning the composition of the
25 Class. Plaintiffs analyzed the data with the assistance of damages expert, Berger Consulting Group,
26 and prepared and submitted a mediation brief and damage valuation to the Mediator. Although a
27 settlement was not reached at the mediation, the Parties continued to negotiate through the mediator
28 until a settlement was reached, which was memorialized in the form of a Memorandum of

1 Understanding. Blumenthal Decl. ¶7(b).

2 The fact that the settlement was negotiated with the assistance of an experienced mediator
3 supports approval. *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 666 (E.D. Cal. Jun 24, 2008); *Glass v. UBS*
4 *Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476; 15 Wage & Hour Cas. 2d (BNA) 1330, at *15 (N.D. Cal.
5 2007) (“The settlement was negotiated and approved by experienced counsel on both sides of the
6 litigation, with the assistance of a well-respected mediator with substantial experience in employment
7 litigation[, and] this factor supports approval of the settlement”).

8 From December 2022 to March 2023, the Agreement and exhibits thereto were drafted, finalized
9 and executed, and presented to this Court on for preliminary approval on May 25, 2023. The Court
10 requested a Revised Proposed Order be submitted along with a supplemental declaration to address
11 certain issues raised by the Court, and continued the hearing on Plaintiffs’ Motion for Preliminary
12 Approval to June 28, 2023. Plaintiffs filed a Revised Preliminary Approval Order, which was entered
13 by this Court on July 3, 2023. Blumenthal Decl. ¶7(c).

14 3. Class Counsel is Experienced in Similar Litigation

15 Class Counsel in this matter has extensive class action experience and has represented thousands
16 of persons in class actions including employment litigation, wage and hour class actions, and complex
17 litigation. Class Counsel has previously litigated wage and hour class actions involving employees and
18 claims similar to this case and have been approved as experienced class counsel during contested
19 motions in state and federal courts throughout California. As such, Class Counsel is experienced and
20 knowledgeable in this area of law. The experience of counsel and class action cases managed and
21 settled by the Class Counsel in this action is provided to the Court in the Blumenthal Decl. at Exhibit
22 #1. Class Counsel have participated in every aspect of the settlement discussions and have concluded
23 the settlement is fair, adequate and reasonable and in the best interests of the Class. Blumenthal Decl.
24 ¶ 3(j).

25 4. To Date, There Are No Objections And No Opt-Outs

26 The reaction of the Class will support approval of the Settlement. On August 2, 2023, the
27 Settlement Administrator mailed the Court-approved Class Notice to the Class Members, which
28

1 provided each class member with the terms of the Settlement, including notice of the claims at issue
2 and the financial terms of the settlement, including the attorneys' fees, costs, and service awards that
3 were being sought, how individual settlement awards would be calculated, and the specific, estimated
4 payment amount to that individual. In disseminating the notices, the Settlement Administrator followed
5 the notice procedures authorized by the Court in its Preliminary Approval Order. Currently, there have
6 been no objections and no opt-outs, and while the notice process is ongoing, the final results will be
7 provided to the Court in advance of the final approval hearing in the declaration of the Administrator.
8 Blumenthal Decl. ¶4.

9 The absence of any objector strongly supports the fairness, reasonableness and adequacy of the
10 Settlement. *See In re Austrian & German Bank Holocaust Litigation*, 80 F. Supp. 2d 164, 175
11 (S.D.N.Y. 2000) ("If only a small number of objections are received, that fact can be viewed as
12 indicative of the adequacy of the settlement."); *Stoetznier v. U.S. Steel Corp.*, 897 F.2d 115, 118-119 (3d.
13 Cir. 1990) (29 objections out of 281 member class "strongly favors settlement"); *Laskey v. Int'l Union*,
14 638 F.2d 954 (6th Cir. 1981) (The fact that 7 out of 109 class members objected to the proposed
15 settlement should be considered when determining fairness of settlement). Here, where there are no
16 objections, the approval of the class is evident.

17 5. The Strength of Plaintiffs' Case

18 The Action generally alleges that Plaintiffs and other Class Members were not provided all
19 minimum wages and overtime compensation and at the correct rate, were not provided and/or paid for
20 meal and rest periods, were not reimbursed for reasonable business expenses, were not provided
21 accurate itemized wage statements, were not paid used sick pay at the correct rate, and were not
22 provided compliant FCRA disclosures and/or authorizations. The Action seeks unpaid wages, penalties,
23 attorney fees, litigation costs, and any other equitable or legal relief allegedly due and owing to
24 Plaintiffs and the other Class Members by virtue of the foregoing claims. Blumenthal Decl. ¶5.

25 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
26 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
27 Defendant present serious threats to the claims of the Plaintiffs and the other Class Members.
28

1 Defendant asserted that Defendant's practices complied with all applicable Labor laws. Defendant also
2 argued that individual settlements with nearly half the Class barred their claims and thus the Class-wide
3 damages were cut in half. Defendant argued that all work time was paid for and that any rounding was
4 facially neutral and therefore lawful. Defendant contends that its meal and rest period policies fully
5 complied with California law and Defendant did not fail to provide the opportunity for legally required
6 meal and rest breaks. Defendant contended that there was no failure to pay for business expenses and
7 any cell phone usage was merely convenient and voluntary such that reimbursement was not legally
8 required. Finally, Defendant could argue that the Supreme Court decision in *Brinker v. Superior Court*,
9 53 Cal. 4th 1004 (2012), weakened Plaintiffs' claims, on liability, value, and class certifiability as to
10 the meal and rest period claims. Defendant also argues that based on its facially lawful practices,
11 Defendant acted in good faith and without willfulness, which if accepted would negate the claims for
12 waiting time penalties and/or inaccurate wage statements. As to the background check claim, Defendant
13 argued that its forms complied with FCRA in all respects. *Coleman v. Kohl's Dep't Stores, Inc.*, 2015
14 U.S. Dist. LEXIS 135746, *17 (N.D. Cal. 2015) (holding a release in a separate document does not
15 violate FCRA); *Luna v. Hansen & Adkins Auto Transp., Inc.*, 2018 U.S. Dist. LEXIS 100055, *18-*19
16 & n.6 (C.D. Cal. 2018). Finally, the court may find remitter/reduction of the statutory damages
17 appropriate. *See e.g. Klingensmith v. Max & Erma's Restaurants, Inc.*, 2007 U.S. Dist. LEXIS 81029,
18 2007 WL 3118505, at *5 (E.D.Pa. 2007). If successful, Defendant's defenses could eliminate or
19 substantially reduce any recovery to the Class. While Plaintiffs believe that these defenses could be
20 overcome, Defendant maintains these defenses have merit and therefore present a serious risk to
21 recovery by the Class. Blumenthal Decl. ¶8(a).

22 In a similar wage and hour case, the federal district court in *Hopson v. Hanesbrands Inc.*, 2009
23 U.S. Dist. LEXIS 33900 (N.D. Cal. 2009), explained in approving an overtime class action settlement:

24 Plaintiffs may have a strong case, but the risks inherent in continued litigation are great.
25 Defendants strongly deny liability for Plaintiffs' principal claim that full-time Service
26 Associates were misclassified as exempt. In addition to the uncertainties raised by
27 Defendants at the preliminary stage regarding Plaintiffs' chance of success in this case,
28 Defendants notes that the question of an employer's duty to provide rest and meal
periods is an open one, signaling even less certainty for Plaintiffs. [...]he gross
settlement amount and the Class Members' expected net recovery, after fees and other
costs are deducted, appear to be a reasonable compromise, in light of the risks of

1 litigation.

2 2009 U.S. Dist. LEXIS 33900 at *19-20 (N.D. Cal. 2009); *see also Browning v. Yahoo!, Inc.*, 2007
3 U.S. Dist. LEXIS 86266, at *30 (N.D. Cal. 2007) (“In considering the strength of Plaintiff’s case, legal
4 uncertainties at the time of settlement - particularly those which go to fundamental legal issues - favor
5 approval.”). As recognized in a federal decision approving settlement of an overtime wage class action:

6 The potential complexity and possible duration of trial also weigh in favor of granting
7 final approval. Plaintiffs acknowledge the difficulties of proving damages, recognize the
8 uncertainty of outcome, and believe defendant would appeal in the event of adverse
9 judgment. A post-judgment appeal would require many years to resolve and delay
10 payment to class members. Plaintiffs believe the benefits of a guaranteed recovery today
11 outweigh an uncertain future result. Accordingly, plaintiffs argue, and the Court agrees,
12 the actual recovery confers substantial benefits on the class that outweigh the potential
13 recovery through full adjudication.

14 *Barcia v. Contain-A-Way, Inc.*, 2009 U.S. Dist. LEXIS 17118, *9 (S.D. Cal. 2009); *see also Louie v.*
15 *Kaiser Foundation Health Plan, Inc.*, 2008 U.S. Dist. LEXIS 78314, *14 (S.D. Cal. 2008).

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

25 In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
26 recovery, particularly when viewed in light of the fact that the Defendant asserted serious and
27 substantial defenses. The maximum and average class member allocations will be detailed in the
28 forthcoming declaration of the Administrator. Given the complexities of this case, the defenses, along
with the uncertainties of proof and appeal, the proposed Settlement is fair, reasonable and adequate, and
should be finally approved. Blumenthal Decl. at ¶8(e).

1 6. The Risk, Expense, Complexity, and Likely Duration of Further Litigation

2 As demonstrated by the decision in *Duran*, the complexities and duration of further litigation
3 cannot be overstated. There is little doubt that Defendant would post a bond and appeal in the event
4 of an adverse judgment. A post-judgment appeal by Defendant would have required many more years
5 to resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case
6 could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh
7 an uncertain result three or more years in the future. Blumenthal Decl. ¶8(c).

8 Plaintiffs and Class Counsel recognize the expense and length of a trial against Defendant
9 through possible appeals which could take at least another two or three years. Class Counsel also have
10 taken into account the uncertain outcome, the risk of litigation, especially in complex actions such as
11 this one. Class Counsel are also mindful of and recognize the inherent problems of proof under, and
12 alleged defenses to, the claims asserted in the Action. Moreover, post-trial motions and appeals would
13 have been inevitable. Costs would have mounted and recovery would have been delayed if not denied,
14 thereby reducing the benefits of an ultimate victory. Plaintiffs and Class Counsel believe that the
15 Settlement confers substantial benefits upon the Class. Based upon their evaluation, Plaintiffs and Class
16 Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the
17 Class. Blumenthal Decl. ¶8(c).

18 Although Plaintiffs and Class Counsel believe that their case has merit, which Defendant
19 continues to vigorously deny, they recognized the potential risks both sides would face if litigation of
20 these Actions continued. As the federal court held in *Glass*, where the parties faced uncertainties
21 similar to those in this litigation:

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

Id. at *12.

1 7. The Amount Offered in Settlement

2 The Settlement in this case is fair, reasonable and adequate considering Defendant's defenses
3 to Plaintiffs' claims. As set forth in the Declaration of Kyle Nordrehaug filed in support of preliminary
4 approval which discussed the value of the class claims in detail, the Gross Settlement Amount compares
5 favorably to the value of the claims. Excluding the Background Class Amount valued at \$78,100
6 (discussed below is \$50 to each of the 1,561 FCRA Class Members), for the 1,766 Wage and Hour
7 Class Members who collectively worked 165,136 Workweeks, the Gross Settlement Amount provides
8 an average value of \$563 per Class Member and \$6 per Workweek and after deductions the Net
9 Settlement Amount provides an average recovery of \$239 per Class Member and a recovery of \$2.56
10 per Workweek. Blumenthal Decl. ¶8(d).

11 The calculations to compensate for the amount due to the Class Members at the time this
12 Settlement was negotiated were calculated by Plaintiffs' expert, Berger Consulting Group, in advance
13 of mediation. As to the Class whose claims are at issue in this Action, Plaintiffs used an expert to
14 analyze the data and determine the potential unpaid wages for the employees. For the Wage and Hour
15 Class, Plaintiffs used the expert to analyze the data and determine the potential unpaid wages for the
16 employees. The maximum potential damages were calculated to be \$609,092 for the alleged unpaid
17 wages due to rounding, \$37,462 for unpaid wages due to the alleged miscalculation of the regular rate,
18 \$2,348,282 for alleged meal period damages based upon the potential violations observed in the records,
19 \$2,348,282 for alleged rest period damages based upon the same rate observed with meal periods,
20 \$218,750 for alleged unreimbursed business expenses for personal cell phone usage at \$5 per month.
21 Decl. Nordrehaug, ¶6. As a result, the total damage valuation was calculated that Defendant was
22 subject to a maximum damage claim in the amount of \$5,561,868. As to potential penalties, Plaintiffs
23 calculated that potential waiting time penalties were a maximum of \$3,219,840 and potential wage
24 statement penalties were \$2,542,250, depending on the predicate violation. Defendant vigorously
25 disputed Plaintiffs' calculations and exposure theories.³ Blumenthal Decl. ¶8(d).

26 _____
27 ³ While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
28 226, at mediation Plaintiffs recognized that these claims were subject to various defenses asserted by
Defendant, including, but not limited to, a good faith dispute defense as to whether any premium wages

1 Consequently, the Gross Settlement Amount represents more than 18% of the maximum value
2 of the alleged wage and hour damages at issue in this case at the time this Settlement was negotiated.⁴
3 The above maximum calculations should then be adjusted in consideration for both the risk of class
4 certification and the risk of establishing class-wide liability on all claims.

5 As to the Background Check Class, FCRA provides for statutory damages of \$100 to \$1,000
6 per willful violation. 15 U.S.C. § 1681n. This means the maximum value of the FCRA claim for the
7 1,978 individuals in the FCRA Class is between \$197,800 and \$1,978,000. A comparison of approved
8 FCRA settlements involving similar facts further confirms the reasonableness of this Settlement. The
9 Court in *Pietras v. Sentry Ins. Co.*, 513 F. Supp. 2d 983, 985 (N.D. Ill 2007), "cited eighteen cases,
10 which settled for an average of \$34.59 per class member." See also *Bailes v. Lineage Logistics, LLC*,
11 2016 U.S. Dist. LEXIS 110943 (D. Kan 2016) (approving a FCRA class settlement which provided
12 \$43.50 per person); *Feist v. Petco Animal Supplies, Inc.*, 2018 U.S. Dist. LEXIS 98686 (S.D. Cal. 2018)
13 (approving FCRA class settlement which equated to \$32.43 per person).⁵ Here, the Settlement
14 allocation of \$50 per FCRA Class Member is certainly fair and reasonable given the prior approved
15

16 for meal or rest periods or other wages were owed given Defendant's position that Plaintiffs were
17 properly compensated. See *Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584 (2010) ("There
18 is no willful failure to pay wages if the employer and employee have a good faith dispute as to whether
19 and when the wages were due."). Additionally, Courts had held that violations of the meal and rest
20 period regulations did not give rise to claims under sections 203 and 226. See e.g. *Ling v. P.F. Chang's*
China Bisto, Inc., 245 Cal. App. 4th 1242, 1261 (2016) and *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.
21 App. 5th 1308, 1336 (2018). As a result, at the time of mediation, the viability of Plaintiffs' claims on
22 these theories was uncertain.

23 ⁴ Because the PAGA claim is not a class claim and primarily is paid to the State of California,
24 Plaintiffs have not included the PAGA claim in this discussion of the value of the class claims. The
25 PAGA claim is addressed at paragraph 33 of the Declaration of Nordrehaug in support of the Motion
26 for Preliminary Approval.

27 ⁵ See also *Moore v. Aerotek, Inc.*, 2017 WL 2838148, at *4 (S.D. Ohio 2017) (per-capita gross
28 recovery of \$25 in FCRA case); *Aceves v. Autozone Inc.*, No. 5:14-cv-2032, ECF No. 58 (C.D. Cal.
2016) (approval of FCRA settlement with gross recovery of \$20 per class member); *Patrick v. Interstate*
Mgmt. Co., LLC, No. 8:15-cv-1252, ECF No. 42 (M.D. Fla. 2016) (approval of FCRA claim where class
members received \$9 each); *Landrum v. Acadian Ambulance Serv., Inc.*, No. 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) (\$24 per person).

1 FCRA settlements and the defenses asserted by Defendant. Given the amount of the Settlement as
2 compared to the potential value of the claims, the Settlement is most certainly fair and reasonable.⁶

3 Defendant disputes Plaintiffs' estimates and believes the amount Plaintiffs can recover for the
4 Class, if anything at all, is actually much lower. Given the amount of the Settlement as compared to
5 the potential value of the claims, the Settlement is most certainly fair and reasonable.⁷ Blumenthal
6 Decl. ¶8(d). Clearly, the goal of this litigation has been met.

7 **V. CONCLUSION**

8 Plaintiffs respectfully submit that the proposed settlement satisfies the standard of fairness
9 established in California law and should therefore be finally approved as fair, reasonable and adequate
10 and requests entry of the Final Approval Order and Judgment, submitted herewith.

11 Respectfully submitted,

12 Dated: August 31, 2023

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

13 By: /s/ Kyle Nordrehaug

14 Kyle R. Nordrehaug
Attorney for Plaintiffs

15 _____
16 ⁶ See *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)
17 approving settlement which represented "roughly one-sixth of the potential recovery"; *Stovall-Gusman*
18 *v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval
19 where "the proposed Total Settlement Amount represents approximately 10% of what class might have
20 been awarded had they succeeded at trial."); *Viceral v. Mistras Grp., Inc.*, 2016 WL 5907869 (N.D. Cal.
2016) (approving wage and hour class action settlement amounting to 8.1% of full verdict value); *Ma*
v. Covidien Holding, Inc., 2014 WL 2472316, (C.D. Cal. 2014) (approving wage and hour class action
settlement worth "somewhere between 9% and 18%" of full verdict value).

21 ⁷ See e.g. *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a
22 settlement where the settlement amount constituted approximately 25% of the estimated overtime
23 damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12
24 (N.D. Cal. 2015) (granting final approval where "the proposed Total Settlement Amount represents
25 approximately 10% of what class might have been awarded had they succeeded at trial."); *Dunleavy*
v. Nadler (In re Mego Fin. Corp. Sec. Litig.), 213 F.3d 454, 459 (9th Cir. 2000) (approving settlement
26 which represented "roughly one-sixth of the potential recovery"); *Stovall-Gusman v. W.W. Granger,*
Inc., 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval where "the
27 proposed Total Settlement Amount represents approximately 10% of what class might have been
28 awarded had they succeeded at trial."); *Viceral v. Mistras Grp., Inc.*, 2016 WL 5907869 (N.D. Cal.
2016) (approving wage and hour class action settlement amounting to 8.1% of full verdict value); *Ma*
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settlement worth "somewhere between 9% and 18%" of full verdict value).