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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SANTA CLARA
12 COMPLEX CIVIL LITIGATION
13

14 JENNIFER GEIERMAN, on behalf of herself,
15 all others similarly situated, and the general
public,

16 *Plaintiff,*

17 vs.

18 GROCERY DELIVERY E-SERVICES USA,
INC., a Delaware corporation; INSPERITY
19 BUSINESS SERVICES, L.P., a Texas limited
partnership; and DOES 1 through 50,
20 inclusive,

21 *Defendants.*

Case No. 20CV361771

Assigned For All Purposes to the Honorable
Theodore C. Zayner, Department 19

**PLAINTIFF'S FIRST AMENDED NOTICE
OF MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT; MEMORANDUM
OF POINTS AND AUTHORITIES**

Date: March 6, 2024

Time: 1:30 p.m

Place: Department 19

Complaint Filed: January 13, 2020

FAC Filed: March 18, 2020

1 TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on March 6, 2024 at 1:30 p.m., or as soon thereafter as the matter
3 may be heard in Department 19 of the above-entitled Court located at 191 North First Street, San Jose,
4 California 95113, Plaintiff JENNIFER GEIERMAN (“Plaintiff”) will and does hereby move this Court
5 for an Order:

- 6 • Preliminarily approving the proposed Joint Stipulation of Class Action Settlement and
7 Release;
- 8 • Certifying the Settlement Class;
- 9 • Appointing Plaintiff as the Class Representative;
- 10 • Appointing Shaun Setareh and William M. Pao of Setareh Law Group as Class Counsel;
- 11 • Approving the Notice of Class Action Settlement;
- 12 • Appointing Simpluris, Inc. as the Settlement Administrator;
- 13 • Directing that notice be mailed to the Settlement Class; and
- 14 • Scheduling a hearing date for the Motion for Final Approval of Class Action Settlement.

15 This motion is made pursuant to California Rules of Court 3.769. This motion will be based
16 upon this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the
17 Declaration of Shaun Setareh as well as exhibits attached thereto, the arguments of counsel, the
18 documents filed in this action and any other matters as may be properly presented on or before the
19 hearing on this motion.

20
21 DATED: December 8, 2023

SETAREH LAW GROUP

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24 _____
25 SHAUN SETAREH
26 WILLIAM M. PAO
27 Attorneys for Plaintiff
28 JENNIFER GEIERMAN

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff JENNIFER GEIERMAN (“Plaintiff”) seeks preliminary approval of a \$945,391.45
4 non-reversionary class and representative action settlement of California wage and hour claims, claims
5 for civil penalties pursuant to the Private Attorneys General Act of 2004 (Lab. Code § 2698, *et seq.*)
6 (“PAGA”), and Fair Credit Reporting Act (15 U.S.C. §§ 1681, *et seq.*) (“FCRA”) claims against
7 Defendants GROCERY DELIVERY E-SERVICES USA, INC. and INSERITY PEO SERVICES, L.P.
8 (erroneously sued as INSUPERITY BUSINESS SERVICES, L.P.) (collectively, “Defendants”). There
9 are three Settlement Classes: (1) the FCRA Class with approximately 9,901 class members; (2) the
10 Brand Ambassador Class with approximately 163 class members; and (3) the Non-Exempt Class with
11 approximately 1,198 class members. The Class Member Payout Fund (“CMPF”) expected to be paid to
12 Class Members—after payment of fees and costs to Class Counsel, settlement administration costs,
13 Plaintiff’s enhancement award, and a payment to the California Labor & Workforce Development
14 Agency (“LWDA”) pursuant to PAGA, but excluding the employer’s share of payroll taxes (which shall
15 not be paid from the Gross Settlement Sum)—is \$552,760.97, with an average estimated individual
16 settlement payment to each FCRA Class Member of \$39.08, to each Brand Ambassador Class Member
17 of \$678.23, and to each Non-Exempt Class Member of \$46.14. In sum, Plaintiff has obtained a
18 significant monetary recovery for Class Members.

19 The Settlement occurred as a result of extensive, arm’s length negotiations by experienced
20 counsel after sufficient discovery and investigation into the facts with the guidance of Steven J.
21 Rottman, Esq., an experienced and well-respected class action mediator. The Settlement seeks to fully
22 and finally settle and resolve all claims Plaintiff pled or could have pled based on the allegations in the
23 operative Complaint filed with the Court, individually and on behalf of all persons within the three
24 classes. The **FCRA Class** includes all persons who applied for employment with Hello Fresh and had a
25 background check performed in connection with their employment during the January 13, 2015 through
26 October 29, 2020 (the “FCRA Class Period”), the **Brand Ambassador Class** includes those who
27 worked for Hello Fresh in California as a Brand Ambassador from January 13, 2016 through
28 Preliminary Approval (the “Hourly Employee Class Period”), and the **Non-Exempt Class** includes

those who worked for Defendant in California as non-exempt employees and signed arbitration agreements with Defendant during the Hourly Employee Class Period.

The Settlement will result in financial benefit to the class members on terms that are fair, reasonable, and adequate. The **\$945,391.45** Gross Settlement Sum (“GSS”) includes Class Counsel’s attorneys’ fees in a sum of up to \$315,130.48, litigation costs of up to \$20,000.00, the PAGA Penalties in the sum of \$10,000.00, settlement administration costs to Simpluris, Inc. not to exceed \$40,000.00, the Class Representative service award to Plaintiff in the sum of up to \$7,500.00, and the Individual Settlement Amount payments to Participating Class Members. Based upon their evaluation, Plaintiff and her counsel, Shaun Setareh and William M. Pao of the Setareh Law Group, have determined that the Settlement is fair, reasonable, adequate and in the best interest of the Class, and they request that this Court grant preliminary approval of the Settlement.

II. THE MAJOR TERMS OF SETTLEMENT

Key provisions of the proposed settlement include the following:

- Defendants stipulate to certification of a Settlement Class for purposes of Settlement only;
- Defendants will pay a total of **\$945,391.45**, referred to as the GSS, unless the escalator clause is triggered, in which case, the Defendant will pay the increased GSS amount based;
- Settlement Class Members will be mailed a check so long as they do not opt out;
- The Settlement will release specified wage-and-hour claims and FCRA claims for those Settlement Class Members who do not opt out of the Settlement;
- The class notice procedure will be administered by a third-party administrator, Simpluris;
- Out of the GSS, **\$7,500.00** (representing 75% of the total **\$10,000.00** allocated to resolve the PAGA claims) will be paid by Defendants to the LWDA;
- Defendants will not oppose the application for Class Representative Enhancement in the amount of **\$7,500.00** to Plaintiff, to be paid out of the GSS.
- Defendants will not oppose Class Counsel’s application for fees up to the amount of **\$315,130.48** (representing one-third of the GSS), and costs, in an amount not to exceed **\$20,000.00**, to be paid out of the GSS.
- After deducting Class Counsel’s attorneys’ fees and costs, enhancement payment to

Plaintiff, settlement administration costs, and the payment to the LWDA, the remainder will be available for distribution to Settlement Class Members who do not opt out as follows:

- Seventy percent (70%) of the Class Member Payout Fund allocated equally among the FCRA Class.
 - Twenty percent (20%) of the Class Member Payout Fund allocated *pro rata* to the Brand Ambassador Class, according to the number of weeks each Brand Ambassador Class Member worked during the Hourly Employee Class Period.
 - Ten percent (10%) of the Class Member Payout Fund allocated *pro rata* to the Non-Exempt Class, according to the number of weeks each Non-Exempt Class Member worked during the Hourly Employee Class Period.
- Any settlement checks that are mailed to the Settlement Class Members but remain uncashed after 180 days from the date of issuance will be cancelled, and the amounts of such checks will be sent to the *cy pres* designated by the parties Legal Aid at Work pursuant to Code of Civil Procedure section 384. If any Class Member's settlement check is not cashed within one hundred and twenty (120) days after its mailing, the Settlement Administrator will send the Class Member a reminder letter or postcard.

(Declaration of Shaun Setareh ("Setareh Decl."), ¶ 12, Ex. 1 Amended Joint Stipulation of Class Class Action Settlement ("Settlement").)

III. STATEMENT OF FACTS

A. THE PARTIES

Grocery Delivery E-Services USA, Inc. operates Hello Fresh, an international publicly traded meal-kit company based in Berlin, Germany. (Setareh Decl., ¶ 18.) It is the largest meal-kit provider in the United States, and also has operations in the United Kingdom, Germany, Austria, Switzerland, the Netherlands, Belgium, Luxembourg, Sweden, France, Australia, New Zealand and Australia, Canada and Denmark. (*Id.*) Insperity provides human resources and administrative services to small and medium-sized businesses. Plaintiff Jennifer Geierman was hired by Defendants on or about June 25, 2018 as a Brand Ambassador. (Setareh Decl., ¶ 19.) Her primary job duties involved inventory and setting up booths at various events. (*Id.*) Her offer letter specifically states that she was hired as "hourly

1 – exempt”. (*Id.*)

2 Plaintiff alleges that when she applied for employment with Defendants, Defendants performed
3 or caused to be performed a background investigation on Plaintiff and obtained a report thereon but
4 failed to provide to Plaintiff background check disclosure and authorization forms that were legally
5 compliant under the FCRA when obtaining her consent to do so. (First Amended Complaint (“FAC”),
6 ¶¶ 62-83; Setareh Decl., ¶ 20.) The form provided allegedly failed to comply with the FCRA because it
7 was not provided as a standalone document and because it was not clear and conspicuous since the
8 language of disclosure was surrounded by extraneous information. (FAC, ¶ 71.) Plaintiff further alleged
9 that Defendants violated FCRA by failing to provide her a proper summary of rights. (*Id.*, ¶¶ 84-95.)

10 Plaintiff further alleges that she and other putative class members who were hired as Brand
11 Ambassadors were misclassified as exempt employees under the Outside Salesperson exemption, and
12 thus, were not provided with all the protections afforded to them as non-exempt employees under
13 California law as discussed below. (*Id.*, ¶¶ 26-30.)

14 Plaintiff alleges that she and the aggrieved employees were not provided with meal periods of at
15 least thirty (30) minutes for each five (5) hour work period due to (1) Defendants' policy of not
16 scheduling each meal period as part of each work shift; (2) requiring employees to travel to job sites by
17 themselves allowing for no relief to take meal periods; (3) Defendants' policy that employees were not
18 to leave their booths with their inventory unattended making it impossible for employees to take a
19 complaint meal period; and (4) intense pressure from Defendants on employees to meet unattainable
20 sales benchmarks that functionally encouraged them to work through the entirety of their scheduled
21 shifts (*Id.*, ¶ 31). During their employment with Defendants, Plaintiff and the aggrieved employees
22 worked shifts of eight to twelve hours per day, without being afforded a meal break during the first five
23 hours, and/or a second meal break after ten hours, as required by California law. (*Id.*, ¶¶ 32.) As a result
24 of Defendants' policy, Plaintiff and the aggrieved employees were regularly not provided with
25 uninterrupted meal periods of at least thirty (30) minutes for each five (5) hours worked nor were they
26 provided with a second uninterrupted meal period when they worked shifts of eight to twelve hours per
27 day due to complying with Defendants' productivity requirements that required Plaintiff and the
28 aggrieved employees to work through their meal periods in order to comply with Defendants policy that

1 sales booths were not to be unattended and to meet Defendants sales benchmarks. (*Id.*, ¶¶ 33.)

2 Plaintiff further alleges that Plaintiff and the putative class members were not provided with rest
3 periods of at least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to
4 (1) Defendants' policy of not scheduling each rest period as part of each work shift; (2) requiring
5 employees to travel to job sites by themselves allowing for no relief to take rest periods; (3) Defendants'
6 policy that employees were not to leave their booths with their inventory unattended making it
7 impossible for employees to take a complaint rest period; and (4) intense pressure from Defendants on
8 employees to meet unattainable sales benchmarks that functionally encouraged them to work through
9 the entirety of their scheduled shifts. (*Id.*, ¶ 34.) As a result of Defendants' policy. Plaintiff alleges that
10 she and the aggrieved employees were regularly not provided with uninterrupted rest periods of at least
11 ten (10) minutes for each four (4) hours worked due to complying with Defendants' productivity
12 requirements that required Plaintiff and the aggrieved employees to work through their meal periods in
13 order to comply with Defendants policy that sales booths were not to be unattended and to meet
14 Defendants sales benchmarks. (*Id.*, ¶ 35.)

15 Plaintiff also alleges that she and the putative class members were not paid all wages for all
16 hours worked and all overtime wages for all overtime hours worked. (*Id.*, ¶¶ 36-50.) Plaintiff and the
17 putative class members regularly started work before their scheduled work hours and were not paid for
18 this time. (*Id.*, ¶ 42.) Plaintiff and the putative class members were instructed by their trainers and
19 managers to drive directly from their homes to their job sites on days that they were not in Defendant's
20 offices. (*Id.*) The drive could take anywhere from twenty minutes to an hour each direction, but Plaintiff
21 and the aggrieved employees were not considered by Defendants to be on-the-clock until their booths
22 were set up at their assigned sites. As a result, Plaintiff and the putative class members reported to work
23 up to an hour before their scheduled shifts. (*Id.*) Moreover, Plaintiff and the putative class also were not
24 provided all overtime wages because Defendants did not accurately their regular rate of pay to include
25 all applicable remuneration. (*Id.*, ¶¶ 47-50.)

26 Finally, Plaintiff alleges that because of these discrepancies in hours worked as reported,
27 Defendants failed to provide accurate wage statements and also failed to timely pay all wages owed to
28 her and other former employees all wages owed upon separation of employment. (*Id.*, ¶¶ 34-41.)

1 **B. PROCEDURAL HISTORY**

2 On January 13, 2020, Plaintiff filed a putative class action complaint against Defendants in the
3 Superior Court of the State of California, County of Santa Clara (the “Complaint”). (Settlement, § III;
4 *see generally*, Complaint.) The Complaint alleged violations of the FCRA, Labor Code violations for
5 failure to provide meal periods, failure to provide rest periods, failure to pay hourly wages, failure
6 indemnify, failure to provide accurate written wage statements, failure to timely pay all final wages,
7 Business & Professions Code section 17200, *et seq.* (*See generally*, Complaint.) On March 18, 2020,
8 Plaintiff filed a FAC alleging an additional cause of action for civil penalties under PAGA. (Settlement,
9 § III; *See generally*, FAC.) On June 26, 2020, Hello Fresh filed its answer and asserted affirmative
10 defenses in response to the amended complaint. (Setareh Decl., ¶ 21.) On July 2, 2020, Insperity filed
11 its answer and asserted affirmative defenses in response to the amended complaint. (*Id.*)

12 The Parties agreed to mediate Plaintiff’s alleged wage and hour, PAGA, and FCRA claims
13 against Defendants and selected Steven J. Rottman, Esq. to serve as mediator. (*Id.*, ¶ 7.)

14 **C. INVESTIGATION AND DISCOVERY**

15 6. The Parties engaged in informal discovery prior to resolving the Action. (Setareh Decl.,
16 ¶ 6.) Specifically, the Parties engaged in an informal, voluntary exchange of information in the context
17 of privileged settlement discussions to facilitate an early mediation. (*Id.*) In preparation for mediation,
18 Defendants produced hundreds of pages of documents which included the relevant FCRA disclosure
19 forms, sample arbitration agreements, applicable employee handbook and policies, Plaintiff’s personnel
20 file, Plaintiff’s payroll records, and a sampling of the Settlement Class time records, including those for
21 Plaintiff. (*Id.*) Defendants also provided the size of each class and the number of weeks worked by the
22 Brand Ambassador and Non-Exempt Classes. (*Id.*) Plaintiff hired an expert to analyze this data with
23 respect to potential damages and penalties in preparation for mediation. (*Id.*) From the data and other
24 documents obtained from Defendants pertaining to the Class and Defendants’ policies, Plaintiff’s expert
25 was able to provide an analysis of Defendants’ potential exposure with respect to the claims, allowing
26 Plaintiff to thoroughly assess the merits of each claim. (*Id.*)

27 **D. SETTLEMENT NEGOTIATIONS AND SETTLEMENT**

28 On October 28, 2020, the Parties participated in a mediation before Steven J. Rottman, Esq., but

1 were unable to resolve the matter at that time. (Setareh Decl., ¶7.) In the months following the
2 mediation, the Parties reached a settlement of all claims in this case and began drafting the Settlement
3 accordingly. (*Id.*) The Parties fully executed the Settlement on January 25, 2022 (*Id.*, § II ¶ 2, § I ¶ 40.)

4 **E. REASONABLENESS OF THE SETTLEMENT**

5 Plaintiff's counsel believes that the Settlement is in the best interest of the Class Members based
6 on their investigation and discovery, their detailed understanding of the issues raised, and the outcome
7 of extensive settlement negotiations. (Setareh Decl., ¶¶ 4-9; Settlement, § V.) The Class
8 Representative and Class Counsel have also taken into account the uncertainty of outcomes and the risks
9 involved of any litigation, especially in putative class actions such as this Action, as well as the
10 difficulties and delays inherent in such litigation. (Settlement, § V.) Defendants deny all of the claims
11 and contentions alleged by the Class Representative in this Action, including defenses based on liability,
12 class certification, and damages. (*Id.*, § IV.) Nonetheless, Defendants have concluded that to continue
13 the Litigation would be protracted and expensive and that it is desirable that the Litigation be fully and
14 finally settled in the manner and upon the terms and conditions set forth in this Stipulation. (*Id.*)

15 **IV. DESCRIPTION OF THE SETTLEMENT**

16 **A. CONTINGENT NATURE OF THE SETTLEMENT**

17 The Settlement including all associated exhibits or attachments, is made for the sole purpose of
18 resolving the above-captioned matter on a class-wide basis. (*Id.*, § I.) Defendants and the Class
19 Representative entered into this Settlement on a conditional basis. (*Id.*) In the event that the Court does
20 not execute and file the Order Granting Final Approval of Settlement, or in the event that the Court does
21 not enter the Judgment, or in the event that the associated Judgment does not become Final for any
22 reason, the Settlement shall be deemed null and void, it shall be of no force or effect whatsoever. (*Id.*)

23 **B. APPOINTMENT OF SETTLEMENT CLASS COUNSEL**

24 The Parties have stipulated to the appointment of Shaun Setareh and William M. Pao of the
25 Setareh Law Group as Class Counsel. (*Id.*, § VI ¶ 1.8.)

26 **C. APPOINTMENT OF SETTLEMENT ADMINISTRATOR**

27 The Parties have stipulated to the appointment of Simpluris Inc. to act as the Claims
28 Administrator (or the "Settlement Administrator"). (*Id.*, § VI ¶ 1.6.) The Parties estimate that

1 settlement administration costs shall not exceed \$40,000.00. (*Id.*, § VI ¶ 2.14(c).)

2 **D. DESCRIPTION OF THE SETTLEMENT CLASS**

3 Solely for the purposes of this Settlement, the Parties stipulate and agree that the Settlement
4 Class is defined as follows (*Id.*, § VI ¶ 1.7):

5 “FCRA Class,” “FCRA Class Members,” or “FCRA Settlement Class” shall mean any
6 individual who applied for employment with Defendant Grocery Delivery E-Service USA,
7 Inc. and had a background check performed in connection with their employment from
8 January 13, 2015 through October 29, 2020.

9 “Brand Ambassador Class”. “Brand Ambassador Class Member”, or “Brand
10 Ambassador Settlement Class” shall mean any individual who worked for Defendant
11 Grocery Delivery E-Service USA, Inc. in California as a Brand Ambassador from January
12 13, 2016 through Preliminary Approval

13 “Non-Exempt Class,” “Non-Exempt Class Members,” or “Non-Exempt Settlement
14 Class” shall mean non-exempt hourly employees who worked for Defendant Grocery
15 Delivery E-Service USA, Inc. in California and who signed arbitration agreements from
16 January 13, 2016 through Preliminary Approval

17 “Settlement Class” shall mean “FCRA Class”, Brand Ambassador Class, and the “Non-
18 Exempt Class” collectively.

19 **E. SCOPE OF THE RELEASE**

20 Upon the Effective Date, the Class Representative and each of the Settlement Class Members who
21 have not submitted a timely and valid Opt Out, shall be deemed to have, and by operation of the Judgment
22 shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims applicable
23 to each of them. (*Id.*, § VI ¶ 3.5.1.)

24 “Released Claims” shall mean:

25 claims that were or could have been brought in this Action relating to and/or arising out of
26 the procurement of, use of, disclosure of intent to procure, or authorization to procure or
27 use a consumer report, investigative consumer report, credit check, background check,
28 criminal history report, reference check, or similar report for violations of the Fair Credit
Reporting Act (“FCRA”), 15 U.S.C. §§ 1681 *et seq.* that accrued during the FCRA Class
Period; wage and hour claims that were brought in this Action, including but not limited to
allegations that Defendants misclassified hourly non-exempt employees as exempt, failed
to provide employees with lawful meal periods, failed to provide employees with lawful
rest periods, failed to pay premium wages when non-exempt employees were not provided
with lawful meal and/or rest periods, failed to pay minimum and/or overtime wages, failed
to reimburse employees for all necessary business expenses in violation of the Labor Code,
including but not limited to sections, 201, 202, 204, 223, 226.7, 510, 512, 1194, 1194.2,
1197, 1197.1, 1198, 2802 and Business and Professions Code section 17200 *et seq.*; for
derivative claims for inaccurate wage statements and waiting time penalties under Labor
Code sections 203 and 226, that accrued during the Hourly Employee Class Period, and
civil penalties under the Labor Code Private attorneys General Act (Labor Code section
§§2698 *et seq.*), that accrued during the applicable Period.

1 (*Id.*, § VI ¶ 1.40)

2 “Released Parties” means each Defendant, each of their respective parent companies,
3 subsidiaries, affiliates, current and former management companies, shareholders,
4 members, agents (including without limitation, any investment bankers, accountants,
insurers, reinsurers, attorneys, and any past, present or future officers, directors, and
employees) predecessors, successors, and assigns.

5 (*Id.*, § VI ¶ 1.5)

6 **F. SETTLEMENT AMOUNT AND ALLOCATION OF SETTLEMENT FUNDS**

7 The Settlement provides for a GSS of **\$945,391.45**, which represents the total settlement amount
8 of \$945,391.45 to be paid by Defendants, subject to the occurrence of the Effective Date of settlement,
9 and includes Class Counsel’s attorneys’ fees in a sum of up to \$315,130.48, and litigation costs of up to
10 \$20,000.00, PAGA Penalties in the sum of \$10,000.00 (of which \$7,500.00 shall be paid to the LWDA,
11 and the remaining 25% paid to Aggrieved Employees), settlement administration costs to Simpluris, Inc.
12 not to exceed \$40,000.00, the Class Representative service award to Plaintiff in the sum of up to
13 \$7,500.00, and the Individual Settlement Amount payments to Participating Class Members (*Id.*, § VI ¶
14 1.19.) The entire CMPF will be paid to Settlement Class members. (*Id.*, § VI ¶ 3.28.) Those funds
15 represented by checks returned as undeliverable and those checks remaining uncashed for more than
16 180 days after issuance will be voided (collectively, the “Voided Settlement Checks”) and the
17 equivalent amount will be sent to White Pony Express (<https://www.whiteponyexpress.org/>), a non-
18 profit child advocacy program. (Amendment to the)

19 Payments to Participating Class Members will be classified: 75% as interest and penalties; and
20 25% as wages for the Brand Ambassador Class and Non-Exempt Class, for which IRS 1099 Forms and
21 W-2 Forms shall be issued. (*Id.*, § VI ¶ 2.1.5.) The same allocations shall apply to each of the Eligible
22 Class Member Shares. (*Id.*) Payments to Participating Class Members for the FCRA Class and the
23 PAGA Payments will be classified as 100% interest and penalties, not subject to withholdings or
24 deductions, for which IRS Forms 1099 shall be issued. (*Id.*)

25 **G. CLASS MEMBER SETTLEMENT PAYMENT FORMULA**

26 The Claims Administrator will calculate a settlement share from the CMPF for each Eligible
27 Class Member. The CMPF will be allocated as follows: (*Id.*, § VI ¶¶ 2.1.6, 1.20):

- 28
- Seventy percent (70%) of the Class Member Payout Fund allocated equally among the

FCRA Class.

- Twenty percent (20%) of the Class Member Payout Fund allocated *pro rata* to the Brand Ambassador Class, according to the number of weeks each Brand Ambassador Class Member worked during the Hourly Employee Class Period.
- Ten percent (10%) of the Class Member Payout Fund allocated *pro rata* to the Non-Exempt Class, according to the number of weeks each Non-Exempt Class Member worked during the Hourly Employee Class Period.

\$10,000.00 of the GSS is allocated to settlement of claims for civil penalties under PAGA. (*Id.*, § I ¶ 29.) Pursuant to Labor Code section 2699(i), 75% of that amount (\$7,500.00) will be paid to the LWDA. (*Id.*) The remaining 25% (\$2,500.00) shall be deemed part of the CMPF and shall be accordingly distributed to the Eligible Class Members as a proportionate part of their Eligible Class Member Shares, proportionate to their number of Eligible Class Member Workweeks. (*Id.*)

H. NOTICE TO CLASS MEMBERS OF SETTLEMENT

The proposed Notice of Class Action Settlement (attached as **Exhibit B** to the Settlement) (the “Class Notice”) provides Settlement Class Members with all required information so that each member may make an informed decision regarding his or her participation in the Settlement. The Notice provides information regarding the nature of the lawsuit, a summary of the substance of the settlement terms, the class definition, the deadlines by which Class Members must request exclusion or submit objections, the date for the final approval hearing, the formula used to calculate settlement payments, a statement that the Court has preliminarily approved the Settlement, and a statement that the Class Members will release the settled claims unless they opt out. The Notice will include an individualized computation of the approximate amount of the individual settlement award that the particular Settlement Class Member will receive from the settlement proceeds and how that amount was calculated.

Defendants shall provide the Class Data List to the Claims Administrator within twenty (20) calendar days of the Preliminary Approval Date. (*Id.*, § II ¶ 5.) The list will be in an electronically usable format containing the following info for each Class Member: (1) the first, last and middle name; (2) Last Known Address; and (3) social security number; and (4) the number of workweeks worked for Defendants. (*Id.*)

1 Within 30 days after Preliminary Approval, the Class Administrator will mail a Class Notice
2 Packet to each Class Member via United States Mail, first class, postage pre-paid. (*Id.*, § VI ¶ 3.2.1.) The
3 envelope containing the Class Notice Packets shall bear the following phrase in bold type, 1/4 inch below
4 the return address or 1/4 inch above the Claims Administrator's name and address: Return Service
5 Requested. (*Id.*) The envelope shall also bear the following phrase in the bottom left-hand corner:
6 "IMPORTANT LEGAL DOCUMENT – You May Get Money From A Class Action Settlement; Your
7 Prompt Reply To Correct A Bad Address Is Required; Please Open Immediately". (*Id.*)

8 Prior to mailing the Class Notice, the Claims Administrator shall undertake a Reasonable Address
9 Verification to ascertain the accuracy of the Last Known Address of Class Members' addresses contained
10 in the Class Data List for former employees. (*Id.*, § VI ¶ 3.2.5.) To the extent this process yields an
11 Updated Address, it shall replace the Last Known Address and be treated as the new Last Known Address
12 for purposes of this Stipulation and for Class Notice mailing. (*Id.*) If a Class Member is known to be
13 deceased, the Class Notice for that deceased Class Member shall be mailed to the Last Known Address
14 (or Updated Address, if applicable) of the legal representative of the deceased Class Member's estate, to
15 the extent known. (*Id.*) In the event that a Class Notice is returned before the Opt Out Deadline to the
16 Claims Administrator by the United States Postal Service because the address of the recipient is no longer
17 valid, the Claims Administrator shall undertake an Accurint or Experian Skip Tracing on the Class
18 Member to attempt to ascertain the current address of the particular Class Member in question and, if such
19 an address is ascertained, the Claims Administrator will re-send the Class Notice within 3 business days
20 of receipt of the returned Class Notice. (*Id.*) If the Class Notice is returned before the Opt Out Deadline
21 to the Claims Administrator by the United States Postal Service with a forwarding address, the Claims
22 Administrator will send the notice to that address within 3 business days. (*Id.*)

23 **I. NOTICE AND PAGA PAYMENT TO THE LWDA**

24 \$10,000.00 of the GSS is allocated to settlement of claims for civil penalties under PAGA. (*Id.*,
25 § VI ¶ 2.1.4(d).) Pursuant to Labor Code section 2699(i), 75% of that amount (\$7,500.00) will be paid
26 to the LWDA. (*Id.*) In connection with Settlement approval, Class Counsel must notify the LWDA of
27 the Settlement's existence. Class Counsel has provided the LWDA with a copy of the proposed
28 Amended Settlement and this Motion to the LWDA. (Setareh Decl., ¶ 17.)

1 **V. ARGUMENT**

2 **A. THE COURT SHOULD CONDITIONALLY CERTIFY THE SETTLEMENT**
3 **CLASS BECAUSE IT MEETS ALL THE REQUIREMENTS FOR CLASS**
4 **CERTIFICATION FOR SETTLEMENT PURPOSES ONLY UNDER CODE OF**
5 **CIVIL PROCEDURE SECTION 382**

6 Under Code of Civil Procedure § 382, class certification is warranted so long as there is “a
7 numerous and ascertainable class with a well-defined community of interest among its members” and a
8 “class action proceeding is superior to other means for a fair and efficient adjudication of the litigation.”
9 *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326, 332. “The certification
10 question is ‘essentially a procedural one that does not ask whether an action is legally or factually
11 meritorious.’” *Id.* at 326 (quoting *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 439-440). Indeed, the
12 certification question simply asks whether the theory of recovery advanced by the plaintiff is likely to
13 prove amenable to class treatment. *E.g., Jaimez v. DAIOHS USA, Inc.* (2010) 181 Cal.App.4th 1286,
14 1298. In ruling on a certification motion, a trial court’s task is to determine “whether...the issues which
15 may be jointly tried, when compared with those requiring separate adjudication, are so numerous or
16 substantial that the maintenance of a class action would be advantageous to the judicial process and to
17 the litigants.” *Id.*

18 “[I]t is also well established that trial courts should use different standards to determine the
19 propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser
20 standard of scrutiny is used for settlement cases.” *Global Minerals & Metals Corp. v. Superior Court*
21 (2003) 113 Cal.App.4th 836, 859 (citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807
22 n.19 (“*Dunk*”). As the court noted in *Dunk*, although certification requirements are intended “to protect
23 the interests of the non-representative class members,” that concern is “protected by the trial court’s
24 fairness review of the settlement.” *Id.*

25 Indeed, numerous courts have certified settlement classes. For example, *In re Drexel Burnham*
26 *Lambert Group, Inc.* (2d Cir. 1992) 960 F.2d 285, *cert. dismissed*, 506 U.S. 1088, 122 L. Ed. 497, 113
27 S. Ct 1070 (1993), the parties entered into a tentative settlement before a class was certified. After a
28 hearing, the “district court issued an order certifying the class and approving the settlement agreement.”
Id. at 289; *see also, Alaniz v. California Processors, Inc.* (N.D. Cal. 1976) 73 F.R.D. 269, 278 (“the use

1 of the tentative settlement class procedure was appropriate in this case"), *aff'd*, 572 F.2d 657 (9th Cir.),
2 *cert. denied*, 439 U.S. 837 (1978). Certification of a settlement class is a regular feature of class action
3 litigation and an approved procedure which ought to be followed in this case. *See Newberg on Class*
4 *Actions* (3d ed. 1991) § 11.27, pp. 11-40 to 11-56; and *Manual for Complex Litigation*, 2d (1993) §
5 30.45.

6 As shown below, this Settlement and the Settlement Class easily meet all of the requirements for
7 certification for settlement purposes.

8 **1. Objectively Ascertainable and Sufficiently Numerous Class**

9 A class is ascertainable when it may be readily identified via an objectively stated definition
10 without unreasonable expense or time by reference to official records. *Rose v. City of Hayward* (1981)
11 126 Cal.App.3d 926, 932. No set number of class members is required to maintain a class action.
12 *Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017, 1030. The California Supreme Court has upheld a
13 class of as few as ten members. *Bowles v. Super. Ct. (Nickel, Jr.)* (1955) 44 Cal.2d 574, 577-81. Here,
14 the FCRA Class is made up of about 9,901 individuals, the Brand Ambassador Class is made up of
15 about 163 individuals, and the Non-Exempt Class is made up of about 1,198 individuals, all of whom
16 may be readily ascertained by reference to Defendants' personnel records. (Setareh Decl. ¶ 22.)
17 Accordingly, the Settlement Class is not only ascertainable but also sufficiently numerous.

18 **2. Predominance of Common Questions**

19 A question of law or fact is common to the members of a class if it may be resolved through
20 common proof. *See Jaimez, supra*, 181 Cal.App.4th at 1305. As for predominance, it "is a comparative
21 concept, and 'the necessity for class members to individually establish eligibility and damages does not
22 mean individual fact questions predominate.'" *Sav-on, supra*, 34 Cal.4th at 334 (quoting *Reyes v. San*
23 *Diego Cty. Bd. of Supervisors* (1979) 196 Cal.App.3d 1263, 1278). Thus, "[i]ndividual issues do not
24 render class certification inappropriate so long as such issues may effectively be managed." *Id.* This is
25 especially so where the key difference between class members solely concerns their respective amounts
26 of damages. *See id.* As a general rule, if a defendant's liability can be determined by facts common to
27 all members, a class will be certified even if the members must individually prove their damages. *See*
28 *Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916.

1 In this case, the Settlement Class meets these requirements. Plaintiff submits that Defendants’
2 liability arises from the same set of facts and legal questions that apply to and are answered equally as to
3 all Class Members. Plaintiff alleges Class Members were subjected to common practices in that
4 Defendants: violated the FCRA by failing to provide a compliant disclosure form and a summary of
5 rights when obtaining authorization to procure background check reports (FAC, ¶¶ 62-95); failed to pay
6 them, *inter alia*, for missed meal periods and rest periods, including premiums (FAC, ¶¶ 96-119), for
7 off-the-clock work and overtime (*Id.*, ¶¶ 120-147), and failure to reimburse all expenses (*Id.*, ¶¶ 148-
8 159); failed to provide compliant wage statements (*Id.*, ¶¶ 160-166); and failed to pay all wages due
9 upon separation of employment (*Id.*, ¶¶ 167-177).

10 The Court accordingly should certify the Settlement Class for purposes of settlement under
11 Code of Civil Procedure section 382 and Rule of Court 3.769(c).

12 3. Typicality of Plaintiff’s Claims

13 Typicality “requires a showing that the class representative has claims or defenses typical of the
14 class.” *See, e.g., Fireside Bank v. Super. Ct. (Gonzalez)* (2007) 40 Cal.4th 1069, 1090. This focuses on
15 “the nature of the claim or defense of the class representative, and not to the specific facts from which it
16 arose or the relief sought.” *Hanlon v. Dataproducts Corp.* (9th Cir. 1992) 976 F.2d 497, 508 (internal
17 citations omitted). “The test of typicality ‘is whether other members have the same or similar injury,
18 whether the action is based on conduct which is not unique to the named plaintiffs, and whether other
19 class members have been injured by the same course of conduct.’” *Id.* (quoting *Schwartz v. Harp* (C.D.
20 Cal. 1985) 108 F.R.D. 279, 282; *accord Classen v. Weller* (1983) 145 Cal.App.3d 27, 46 (“it has never
21 been the law in California that the class representative must have *identical* interest with the class
22 members”).

23 Under these standards, Plaintiff’s claims are typical of those of the Settlement Class members.
24 Like the Brand Ambassador Class Members, Plaintiff worked in California for Defendants as a “Brand
25 Ambassador” and alleges that she was misclassified as a non-exempt employee. (Setareh Decl., ¶ 10.)
26 Due to the misclassification, Plaintiff alleges that she was subject to the same kind of violations
27 allegedly suffered by Non-Exempt Class Members and other misclassified Brand Ambassador Class
28 Members in that she was not paid for all hours worked and all overtime, was not provided with

1 compliant meal periods and rest breaks, was not reimbursed for all of her expenses, was not paid all
2 wages upon separation of employment, and did not receive accurate wage statements. (*Id.*) *See*
3 *Classen, supra*, 145 Cal.App.3d at 46 (representative plaintiffs need not have all claims or identical
4 interests with class members; they need only have claims that are “typical of the class”); *see also B.W.I.*
5 *Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 (representative plaintiffs
6 need not suffer all of the exact same damages as every class member). Moreover, Plaintiff alleges that
7 similarly to other FCRA Class Members, Defendant ran a background check on her using a non-
8 compliant disclosure. Accordingly, Plaintiff pursues claims typical of the class she seeks to represent.
9 (*Id.*)

10 4. Adequacy of Plaintiff and Class Counsel to Represent the Class

11 The adequacy requirement is met where the named plaintiffs are represented by counsel
12 qualified to conduct the litigation and the plaintiffs’ interest in the litigation is not antagonistic to the
13 class’s interests. *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51. In other words,
14 where the named plaintiffs have adequate counsel, they may represent the entire class absent any
15 disabling conflicts of interest that might hinder the named plaintiffs’ ability to represent the class. *Id.*

16 In this case, Plaintiff has no conflict of interest with absent Settlement Class Members and has
17 agreed to place the Settlement Class’s interests above her own. (Setareh Decl., ¶ 10.) *See Global*
18 *Minerals, supra*, 113 Cal.App.4th at 851 (the inquiry into the adequacy of a class representative is
19 intended to uncover any conflicts between the plaintiff and the class he or she seeks to represent).
20 Plaintiff’s counsel, Setareh Law Group, is experienced in wage and hour and FCRA class action
21 litigation and has no conflicts of interest with absent Class Members. (Setareh Decl., ¶¶ 4-5, 10.) Thus,
22 this Court should appoint Plaintiff as Class Representative for the Settlement Class and appoint her
23 counsel as Class Counsel.

24 B. STANDARD FOR GRANTING PRELIMINARY SETTLEMENT APPROVAL

25 Cases brought as class actions may only be settled upon court approval and then only after a
26 determination that the settlement is fair, adequate, and reasonable is made. *In re Microsoft I-V Cases*
27 (2006) 135 Cal.App.4th 706, 723. Courts have broad discretion to make this determination and consider
28 factors, such as the strength of plaintiff’s case, the risk, expense, complexity and likely duration of

1 further litigation, the risk of maintaining class action status through trial, the amount offered in
2 settlement, the extent of discovery completed and the stage of the proceedings, the experience and views
3 of counsel, and the reaction of the class members to the proposed settlement. *Id.* at 723; *Dunk*, 48
4 Cal.App.4th at 1800-01; *Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 336. “[A]
5 presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2)
6 investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel
7 is experienced in similar litigation; and (4) the percentage of objectors is small.” *Dunk*, 48 Cal.App.4th
8 at 1802; *see also Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 52.

9 California Rule of Court 3.769 sets forth the procedures for settlement of class actions in
10 California. A two-step process is required. First, the court preliminarily approves the settlement and the
11 class members are notified as directed by the court. Cal. Rule of Court 3.769(c) – (f). “The notice must
12 contain an explanation of the proposed settlement and the procedures for class members to follow in
13 filing written objections to it and in arranging to appear at the settlement hearing and state any
14 objections to the proposed settlement.” Cal. Rule of Court 3.769(f). Second, the court conducts a final
15 approval hearing to inquire into the fairness of the proposed settlement. Cal. Rule of Court 3.769(g). If
16 the court approves the settlement, a judgment is entered with provision for continued jurisdiction for the
17 enforcement of the judgment. Cal. Rule of Court 3.769(h).

18 In deciding whether to grant preliminary approval, courts are to give “due regard” to “what is
19 otherwise a private consensual agreement between the parties.” *Sutter Health Uninsured Pricing Cases*
20 (2009) 171 Cal.App.4th 495, 505. When approving a settlement, “the court need not ‘reach any
21 ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute, for
22 it is the very uncertainty of the outcome in litigation and avoidance of wasteful and expensive litigation
23 that induce consensual settlements.’” *Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268,
24 1291 (quoting *Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 625).¹ The

26 ¹ The California Supreme Court has suggested that trial courts, in the absence of controlling California
27 authority, utilize class action procedures of the Federal Rules of Civil Procedure. *See LaSala v.*
28 *American Sav. & Loan Ass’n* (1971) 5 Cal.3d 864, 872. Thus, the Court may look to federal authorities
in ruling on this motion.

1 court's inquiry must be limited to the extent necessary to reach a reasoned judgment that the agreement
2 is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the
3 settlement, taken as a whole, is fair, reasonable and adequate to all concerned. *Id.*

4 **C. THIS COURT SHOULD GRANT THIS MOTION AND ISSUE AN ORDER**
5 **PRELIMINARILY APPROVING THE SETTLEMENT BECAUSE IT IS FAIR,**
6 **ADEQUATE, AND REASONABLE**

7 **1. The Settlement Is the Result of Serious, Informed, Non-Collusive**
8 **Negotiations**

9 The Parties reached this Settlement only after they conducted extensive and protracted arm's-
10 length negotiations through an experienced and knowledgeable mediator, Steven J. Rottman, Esq.
11 (Setareh Decl., ¶ 7.) The Parties have not engaged in any collusion or improper negotiations. (*Id.*)
12 Plaintiff and Defendants do not have any agreements regarding the proposed Settlement that are not
13 reflected in the Stipulation of Settlement. (*Id.*)

14 **2. Sufficient Fact Investigation and Discovery Has Occurred to Assess the**
15 **Fairness of the Settlement**

16 As discussed above, Plaintiff's counsel engaged in extensive investigation and discovery that
17 has allowed them to evaluate the merits of the class members' claims and Defendants' defenses as well
18 as the range of possible recoverable damages. (Setareh Decl., ¶¶ 6-8.) Based on Plaintiff's counsel's
19 investigation and discovery, Plaintiff and her counsel are of the opinion that this settlement is fair,
20 reasonable, and adequate and in the class members' best interest. Plaintiff's counsel's investigation and
21 discovery is more than sufficient to warrant their, and the Plaintiff's, decision to enter into the
22 Stipulation of Settlement.

23 Defendants provided Plaintiff with pre-mediation discovery, various relevant FCRA disclosures,
24 sample arbitration agreements, applicable employee handbook and policies, Plaintiff's personnel file,
25 Plaintiff's payroll records, and a sampling of the Settlement Class time records which included
26 Plaintiff's time records. (*Id.*, ¶ 6.) Defendants also produced the size of each of the Classes and the
27 number of workweeks worked by the Brand Ambassador and Non-Exempt Classes. (*Id.*) Based on the
28 data obtained from Defendants, Plaintiff's expert was able to analyze the claims, and Plaintiff was then
able to assess the merits of each claim. (*Id.*)

1 For example, prior to mediation, Plaintiff obtained Hello Fresh’s offer letter which was provided
2 to Plaintiff and other Brand Ambassadors. (*Id.*) The letter stated that Brand Ambassadors are exempt
3 and, therefore, will not be eligible for overtime. (*Id.*) The payroll data provided by Defendants confirms
4 that Defendants followed this policy as there are no overtime hours included on the pay summaries.
5 (*Id.*) Another example is that Defendants produced the Summary of Rights form in connection with
6 employment applicants’ authorization to obtain a background check report, which demonstrated the low
7 probability of Plaintiff and the putative class recovering on Plaintiff’s second cause of action. (*Id.*)

8 **3. The Parties’ Counsel Are Experienced Class Action and Employment**
9 **Attorneys and the Amount of Attorney’s Fees Sought Are Appropriate**

10 As detailed more completely in the declaration of Shaun Setareh of the Setareh Law Group,
11 Plaintiff’s counsel are particularly experienced in employment law, FCRA, and wage and hour class
12 actions. (Setareh Decl., ¶¶ 4-5, 15.)

13 Plaintiff’s counsel believe that 1/3 of the GSS that they will seek in attorneys’ fees are
14 appropriate in this matter. (*Id.*, ¶ 15.) The Court of Appeal has recognized that one factor supporting a
15 lodestar multiplier is comparison to the fees typically earned in contingency fee litigation where the
16 plaintiff’s attorney is awarded fees based on a percentage of the award recovered for the client: “to
17 ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace in
18 comparable litigation.” *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 50. As the Court
19 knows, contingency fees typically range from 1/3 to 40% of total recovery. Indeed, Setareh Law Group
20 has been awarded 1/3 of the common fund in attorneys’ fees in numerous class actions. (Setareh Decl.,
21 ¶ 15.)

22 Factors that courts consider in determining the multiplier include: “The quality of the
23 representation, the novelty and complexity of the issues, the results obtained, and the contingent risk
24 presented.” *Lafitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 489. “There is no hard and
25 fast rule limiting [these]...numerous factors, and their evaluation is entrusted to a trial court’s sound
26 discretion.” *Center for Biological Diversity v. Cty. of San Bernardino* (2010) 185 Cal.App.4th 866, 901.

27 Counsel believe the proposed settlement is fair, reasonable, and adequate in light of the
28 complexities of the case, the uncertainties of further litigation, and that it represents a fair and reasonable

recovery for the Settlement Class.

4. **The Settlement Is Fair and Reasonable Based on the Strength of Plaintiff's Case and the Risks and Costs of Further Litigation**

California courts recognize that “the merits of the underlying class claims are not a basis for upsetting the settlement of a class action.” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 246 (quoting *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1150). The settlement need not provide one-hundred percent of the damages sought in order to be judged reasonable. *Wershba*, 91 Cal.App.4th at 250. “Thus, even if ‘the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated,’ this is not a bar to a class settlement because ‘the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.’” *Id.* (quoting *Air Lines Stewards v. American Airlines, Inc.* (7th Cir. 1972) 455 F.2d 101, 109).

The following chart provides the estimated potential recovery on a class basis that Plaintiff believes she could reasonably achieve *if she were to prevail on all her causes of action*:

Plaintiff's Estimated Potential Recovery		
Assumptions During Class Period (based on data provided by Defendants)		
Number of Shifts (Brand Ambassadors): 10,570 Number of Shifts (Non-Exempt): 166,100		
Brand Amb. Average Hourly Pay Rate: \$14.00 Non-exempt Average Hourly Pay Rate: \$15.00		
Number of Separated Brand Ambassadors: 163 FCRA Class Members: 9,901		
Number of Separated Non-Exempts: 36 Month Count: 3,287		
Employees since 1/13/2019 (BA): 45 Employees since 1/13/2019 (Non-Ex): 297		
Cause of Action	Estimated Potential Recovery	Calculations for Estimated Potential Recovery
Meal Period Premiums	Brand Ambassadors \$73,990.00	\$14.00 Average Hourly Pay Rate x 10,570 Shifts x 50% Violation Rate
	Non-Exempt \$249,150.00	\$15.00 Average Hourly Rate x 166,100 Shifts x 10% Violation Rate
Rest Period Premiums	Brand Ambassadors \$73,990.00	\$14.00 Average Hourly Pay Rate x 10,570 Shifts x 50% Violation Rate
	Non-Exempt \$249,150.00	\$15.00 Average Hourly Rate x 166,100 Shifts x 10% Violation Rate

Off-the-Clock Work (Unpaid Overtime)	Brand Ambassador \$295,960.00 Non-Exempt \$622,875.00	2 Hours x 10,570 Shifts x \$14.00 Hourly Rate 15 Minutes x 166,100 Shifts x \$14.00 Hourly Rate
Reimbursement (Brand Ambassadors)	Mileage \$117,327.00 Cell Phone \$164,350.00 Office supplies \$82,175.00	\$0.555/mi average mileage reimbursement rate x 20 miles per shift x 10,570 Shifts \$50 cell phone expense per month x 3,287 months \$25 office supplies expense per month x 3,287 months
Sub-Total (Unpaid Wages Claims)	Brand Ambassador \$807,792.00 Non-Exempt \$1,121,175.00	
Labor Code § 203 Penalties	Brand Ambassadors \$547,680.00 Non-Exempt \$129,600.00	8 hours x 30 days x Brand Ambassador Average Hourly Pay Rate x Separated Employees 8 hours x 30 days x Brand Ambassador Average Hourly Pay Rate x Separated Employees
Labor Code § 226 Penalties	Brand Ambassadors \$180,000.00 Non-Exempt \$1,188,000	\$4,000 x 45 employees \$4,000 x 297 employees
FCRA Penalties	\$990,100.00	FCRA Class Members x \$100 statutory penalty
TOTAL (Class Claims)	FCRA \$990,100.00 Brand Ambassadors \$1,535,472.00 Non-Exempt \$2,438,775.00 Total \$4,964,347.00	

PAGA Penalties	\$606,400.00
<i>Total if PAGA included</i>	<i>\$5,570,747.00</i>

(Setareh Decl., ¶ 8.)

Despite a total potential recovery of almost \$5 million on her class claims, Plaintiff recognizes the challenges she faces in certifying a class action and establishing liability on the underlying wage and hour claims. Plaintiff estimates that her likelihood of prevailing on *all* her causes of action are extremely low and thus her likelihood of recovering \$5.5 million or anything close to that amount on behalf of a class is very unlikely. For those claims, if any, that are certified for class treatment, Plaintiff must prevail at a trial on the merits. In addition to having to prove that Plaintiff and other workers were not paid for all hours worked, Plaintiff must establish willfulness with respect to waiting time penalties claim under Labor Code Section 203 and FCRA violations.

With respect to the claims asserted on behalf of the settlement Class in this case, there are significant risks that support the reduced compromise amount. These risks include, but are not limited to the following:

(i) The risk that Plaintiff would be unable to establish liability for allegedly unpaid straight time and overtime wages, *see Duran v. U.S. Bank Nat'l Ass'n* (2014) 59 Cal.4th 1, 39 & fn. 33 (“*Duran*”) (citing *Dilts v. Penske Logistics LLC* (S.D. Cal. 2014) 2014 WL 205039 (dismissing certified off-the-clock claims based on proof at trial)).

(ii) The risk that Plaintiff would not be able to prove liability for alleged failure to provide compliant meal periods and rest breaks; or that to establish liability for the failure to provide compliant meal periods and rest breaks would require an individualized inquiry that would prevent these issues from being resolved on a class and/or collective basis. For example, Plaintiff alleged that Defendants did not provide rest breaks. Defendants allege they did in fact provide rest breaks and that in order to prove whether each employee took their rest breaks, would require an individualized inquiry that would prevent this issue from being resolved on a class and/or collective basis.

(iii) The risk that Plaintiff would not recover waiting time and wage statement penalties

1 pursuant to Labor Code sections 203 and 226. For example, there is currently a split of authority as to
2 whether such penalties can be obtained based on failure to provide meal breaks. *See e.g., Singletary v.*
3 *Teavana Corporation* (N.D. Cal. May 2, 2014) 2014 WL 1760884, *4 (noting that “the law in this area
4 is murky at best” and holding that section 203 penalties are not applicable to meal and rest break
5 claims). Plaintiff also might not prove that Defendants acted with the intent necessary for the alleged
6 claims for penalties under Labor Code sections 203 and 226. Specifically, section 203 requires that a
7 plaintiff show the employer committed a “willful” violation of the law in withholding wages. “A good
8 faith dispute that any wages are due will preclude imposition of waiting time penalties under Section
9 203.” 8 Cal. Code Regs. § 13520. Similarly, penalties pursuant to section 226 require a “knowing and
10 intentional” violation. Defendants contend that they would present several good faith defenses that
11 would preclude a finding of willfulness under section 203. *See Choate v. Celite Corp.* (2013) 215
12 Cal.App.4th 1460 (reversing award of section 203 penalties based on good faith defense where
13 underlying wage claim presented issue of first impression). Any such good faith dispute could preclude
14 penalties.

15 (iv) The risk that Defendant’s challenged employment policies might not ultimately support
16 class certification or a class-wide liability finding, *see, Duran*, 59 Cal.4th at 14 & fn. 28 (citing Court of
17 Appeal decisions favorable on class certification issue without expressing opinion as to ultimate
18 viability of proposition). Defendants have contended, for example, that they did not have a purported
19 policy of not paying required compensation, but rather a policy of paying compensation and of requiring
20 employees to report any unpaid compensable time, and that any failures to report by employees cannot
21 be legally charged to Defendants and in any event involve such highly individualized circumstances as
22 to prevent class and collective certification should this case be litigated. *See, e.g., Morillion v. Royal*
23 *Packing Co.* (2000) 22 Cal.4th 575, 585 (employer not required to pay employees for time spent
24 performing work of which the employer had no knowledge).

25 (v) For the same reasons, liability, damages recovery, and certification risks are heightened
26 given: (1) the risk that uncertainties pertaining to the ultimate legality of Defendants’ policies and
27 practices could preclude class-wide awards of statutory penalties under Labor Code section 226(e); (2)
28 the risk that individual differences between settlement Class Members could be construed as pertaining

1 to liability, and not solely to damages, *see, Duran*, 59 Cal.4th at 19; and (C) the risk that class or
2 collective treatment could be deemed improper as to one or more claims except for settlement purposes.

3 (vi) The risk that any civil penalties award under PAGA could be reduced by the Court in its
4 discretion could materially impact the recovery by the Class, *see* Labor Code § 2699(e)(1).

5 (vii) The risk that lengthy appellate litigation could ensue as to both liability and certification
6 issues, with associated litigation risk and costs, further enhances the value of a confirmed settlement as
7 opposed to unpredictable litigation.

8 (viii) Although the PAGA penalties calculated by Plaintiff's expert amounts to an extravagant
9 \$606,400, that amount is not likely to bear fruit in this case. Most significantly, the ultimate decision as
10 to the amount of penalties is always up to the discretion of the Court. Labor Code § 2699(e)(2) states:
11 "In any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision
12 (a) or (f), a court may award a lesser amount than the maximum civil penalty amount specified by this
13 part if, based on the facts and circumstances of the particular case, to do otherwise would result in an
14 award that is unjust, arbitrary and oppressive, or confiscatory." Subdivision (a) states, "Notwithstanding
15 any other provision of law, any provision of this code that provides for a civil penalty to be assessed and
16 collected by the Labor and Workforce Development Agency or any of its departments, divisions,
17 commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be
18 recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and
19 other current or former employees pursuant to the procedures specified in Section 2699.3." Subdivision
20 (f) specifies the penalties in instances where the underlying statute does not specify any civil penalty. In
21 other words, where the facts and circumstances of the particular case demonstrate that an unreduced
22 award would be "unjust, arbitrary and oppressive, or confiscatory," the court (or arbitrator) may reduce
23 the award so as to ameliorate any such finding. In *Cotter*, the court found a significant reduction of the
24 PAGA claim would be appropriate because "[t]his does not appear to be a case where a company has
25 deliberately sought to evade the law." *Cotter v. Lyft, Inc.* (N.D. Cal. 2016) 176 F.Supp.3d 930, 941.
26 This could apply here, particularly with respect to Defendants, who employ low-wage earners in the
27 hotel and hospitality industry, an industry that has traditionally been a low margin business.
28 Accordingly, the imposition of any large penalty on Defendants could render Defendants non-viable.

1 This is certainly a material risk.

2 In these respects, Defendants strongly deny any liability and the propriety of class certification
3 for any reason other than settlement. Continued litigation of this lawsuit presented Plaintiff and
4 Defendants with substantial legal risks that were (and continue to be) very difficult to assess.
5 In light of the uncertainties of protracted litigation, the Settlement amount reflects a fair and reasonable
6 recovery for the settlement Class Members. The Settlement amount is, of course, a compromise figure.
7 By necessity, it took into account risks related to liability, damages, class and collective action
8 certification, and all the defenses asserted by the Defendants as to all such matters. Moreover, each
9 Settlement Class Member will be given the opportunity to opt out of the Settlement, allowing those who
10 feel they have claims that are greater than the benefits they can receive under this Settlement to pursue
11 their own claims.

12 **(a) Additional risks of the Non-Exempt Class Members**

13 In addition to the risks above, Non-Exempt Class Members also signed arbitration agreements.
14 (Setareh Decl., ¶ 9.) The class consists of employees who signed arbitration agreement and were
15 excluded from a previous settlement in *Avis Davis v. Grocery Delivery Services USA Inc.*, Contra Costa
16 Superior Court, Case No. C18-02253. This raises an additional risk for those class members as they
17 might not be able to bring their claims as a class action if the arbitration agreement is found to be
18 enforceable. Not being able to bring wage and hour claims in a class action raises several issues. (*Id.*)

19 First, it would be difficult for those class members to find an attorney who would be willing to
20 take an individual wage and hour case because the class members generally would not recover much
21 money. (*Id.*) Based off the Plaintiff's estimation, the total claims, if successful on all of the risks, would
22 amount to \$2,438,775.00 for 1,198 class members, which equals out to an average recovery of
23 approximately \$2,035. (*Id.*) As this is a very small amount, an attorney would recover very little
24 attorney fees, and therefore, would be unlikely to bring an individual action on behalf of the class
25 member. (*Id.*)

26 Second, the small recovery might not be worth the time for the class member to prosecute. (*Id.*)
27 Not only would the class member have to spend significant amount of time searching for an attorney to
28 bring the claim, but reaching an individual settlement, minus attorneys fees and costs, might not be

1 worth spending time on for the class member, as they would have to spend hours on finding an attorney,
2 speaking to the attorney regarding the facts of the case, participating in settlement negotiations,
3 reviewing documents like the settlement agreement, among any other task that would be required of
4 them. (*Id.*) In a class action, the efforts of the class representative are awarded with a service award in
5 addition to what they are owed under the settlement, while other class members have to perform only a
6 tiny fraction of the work to receive their settlement share. For these reasons, a class member might be
7 unlikely to seek an individual wage and hour action. (*Id.*)

8 However, even if a class member decides to seek their own action, this Settlement does not
9 preclude them from doing so. (*Id.*) Even with the approval of the settlement, if any class member thinks
10 they can recover more through prosecuting their own actions and are willing to put in the time and effort
11 to do so may still elect to do that by opting out of the settlement. (*Id.*) By opting out, they do not release
12 their claims and can choose to pursue them individually. (*Id.*) However, those for whom it would not be
13 worth pursuing an individual action would recover a greater—albeit discounted—amount rather than
14 nothing should they be unable to hire an amenable attorney or just decide not to pursue the action. (*Id.*)

15 Class Members further benefit from this Settlement in that they are put on notice as to the
16 alleged violations of the employer, which allows them to decide to accept the settlement payment or to
17 opt-out and pursue their own action. (*Id.*) Without the settlement notice, Class Members would likely
18 gain nothing, as they might not even realize that they ever had a claim in the first place. (*Id.*) Therefore,
19 even though the settlement amount is heavily discounted for the Non-Exempt Class Members, it is
20 nonetheless fair and reasonable, as otherwise, those class members are likely to receive nothing. (*Id.*)

21 **(b) The FCRA Claims for the FCRA Class**

22 The FCRA's damages provision limits recovery when it is shown that a defendant's actions are
23 willful to between \$100 and \$1,000 or actual damages, whichever is greater. With approximately 9,901
24 class members, the FCRA statutory damages, if liability were proven, ranges between \$990,100 to
25 \$9,901,000. It is reasonable to assume that a jury in this case would enter an award at the lower end of
26 the potential \$100 to \$1,000 range per violation and that a \$9,901,000 verdict, while permissible under
27 the plain language of the statute, would be highly unlikely. A recent jury verdict from the Northern
28 District in an FCRA case illustrates the type of case where a jury would predictably award close to the

1 \$1,000 per violation penalty. *Ramirez v. Trans Union LLC* (N.D. Cal. 2017) 2017 WL 5153280 (Order
2 denying Motion for New Trial). *Ramirez, supra*, at *1, involved an award of over \$60 million in
3 punitive and statutory damages in a case alleging violation of 15 U.S.C. § 1681e(b), which requires
4 credit reporting agencies to use “reasonable procedures to ensure “maximum possible accuracy” of the
5 information they provide. The defendant Trans Union mistakenly identified the class members as being
6 Specially Designated Nationals on the federal government’s list of “terrorists, drug traffickers and
7 others with whom Americans are prohibited from doing business.” *Id.* In addition to punitive damages
8 the jury awarded statutory damages of \$984.22 per class member. *Id.* at *5. While Plaintiff strongly
9 believes that Defendant did not comply with the law, and that it was willful under *Syed*, the conduct at
10 issue here is not comparable to the egregious conduct at issue in *Ramirez*.

11 In determining the amount of statutory damages to award under the FCRA, courts have looked
12 at “the importance, and hence the value of the rights and protections” involved in the case. *Ashby v.*
13 *Farmers Ins. Co. of Or.* (D. Or. 2008) 592 F.Supp.2d 1307, 1308. For example, among the conduct
14 prohibited by the FCRA is the inclusion of inaccurate information in consumer reports after the
15 consumer has disputed the information. 15 U.S.C. § 1681i. It is reasonable to assume that a statutory
16 damages award would be significantly higher where the underlying grievance was that inaccurate,
17 seriously derogatory information is included in a consumer report, even though the consumer
18 demonstrated that it was inaccurate. Another prohibited act is including arrest records that are more
19 than seven years old in a consumer report. 15 U.S.C. § 1681c(a)(2). It would be reasonable to assume
20 that a violation of this section would result in a higher statutory damages award than the conduct at
21 issue here.

22 To Plaintiff’s counsel’s knowledge, no FCRA standalone disclosure case has ever gone to
23 verdict. Therefore, an estimate of the likely award is admittedly somewhat speculative. However,
24 recent district court decisions have indicated that the minimum of \$100 is the proper comparator in
25 standalone disclosure cases. *See, e.g., Lagos v. Leland Stanford Junior University* (N.D. Cal. 2017)
26 2017 WL 1113302 *4. As a district court explained:

27 A review of Plaintiffs’ claim indicates that, assuming success, the award at trial would be
28 around \$100. While the inclusion of the waiver and disclaimer might have been inconsistent
with the language of the stand-alone disclosure requirement, it was arguably consistent with

the purpose of that provision. *See* Letter from Cynthia Lamb, Investigator, Div. of Credit Practices, Fed. Trade Comm'n, to Richard Steer, Jones Hirsch Connors & Bull, P.C. (Oct. 21, 1997), 1997 WL 33791227 (F.T.C.), 1 (“The reason for specifying a stand-alone disclosure was so that consumers will not be distracted by additional information at the time the disclosure is given.”). As for the possibility that applicants did not understand the waiver (because it was included on the disclosure form), there is no indication that Kelly has ever attempted to enforce that waiver. As such, the violation of the FCRA asserted in this case is only technical in nature, and so the Court would expect class members to receive around \$100—or less—should they prevail at trial. *See Singleton v. Domino’s Pizza, LLC*, 976 F. Supp. 2d 665, 680 (D. Md. 2013) (“[T]his case involves allegations of technical FCRA violations, which creates the risk that even if a jury awarded the minimum requisite statutory damages, i.e., \$100 to each of the individual class members, the court may find remitter/reduction appropriate.”). *Hillson v. Kelly Servs.*, 2017 WL 279814 (E.D. Mich. 2017) (approving settlement where statutory damages award ranged from \$14 to \$41 per class member).

In this case, Plaintiffs sought statutory damages under the FCRA, which provides for damages between \$100 and \$1,000 if the plaintiff can prove that violation of the statute was willful. 15 U.S.C. § 1681n(a)(1). To obtain statutory damages for an FCRA violation, plaintiffs must meet a very high standard of proof, and may even lose after a successful trial verdict. *See Smith v. LexisNexis Screening Solutions, Inc.*, 837 F.3d 604, 611 (6th Cir. 2016) (reversing jury verdict, finding that the consumer reporting agency’s conduct did not constitute a willful violation of the FCRA); *Domonoske v. Bank of America, N.A.*, 790 F.Supp.2d 466, 476 (W.D. Va. 2011) (“given the difficulties of proving willfulness or even negligence with actual damages, there was a substantial risk of nonpayment [for FCRA violations]”). The FCRA does not provide specific guidance to courts as to the appropriate relief for a statutory violation. However, to recover actual damages Plaintiffs would need to prove that they suffered an actual injury; for example, that they lost job opportunities or their employment was terminated as a result of Aerotek’s actions.

The settlement at issue provides for a common fund of \$15,000,000, and per class member payments of between \$13-\$80. (Doc. 33, p. 12). In the unopposed brief, Plaintiffs assert that given the breadth of violations, as well as the size of the Class, it is “unlikely that Plaintiffs would achieve an award of statutory damages which, on a per person basis, would substantially exceed \$100.”

Moore v. Aerotek, Inc. (S.D. Ohio 2017) 2017 WL 2838148.

Multiple district courts have approved FCRA standalone disclosure settlements where the gross and net settlement amounts were comparable and even lower than here. *See, e.g., Rhom v. Thumbtack, Inc.* (N.D. Cal. 2017) 2017 WL 4642409 (granting final approval in a case involving a claims-made, albeit non-reversionary, settlement where 66,676 class members shared in a \$225,000 settlement or a gross recovery of \$3.30 per class member); *Aceves v. Autozone Inc.* (C.D. Cal. Mar. 25, 2016) No. 5:14-cv-2032, ECF No. 41 (preliminary approval motion pending in settlement with gross recovery of \$20 per class member in the disclosure class); *In re Uber FCRA Litigation* (N.D. Cal. 2017) 2017 WL 2806698 (approved a settlement of \$7.5 million with 1,025,954 class members, or \$7.31 per class member); *Landrum v. Acadian Ambulance Serv., Inc.* (S.D. Tex. Nov. 5, 2015) No. 14-cv-1467, ECF

1 No. 37 (approving disclosure settlement of \$10 per person); *Walker v. McClane/Midwest, Inc.*, No. 2:14-
2 CV-04315, ECF No. 26 (W.D. Mo. July 20, 2015) (granting preliminary approval of settlement in which
3 disclosure class members will recover \$24).

4 As noted above, what a jury would award is speculative, particularly given that there is no
5 history of jury verdicts in standalone disclosure cases to provide an empirical comparison. However, it
6 would not be at all surprising if a jury decided to award closer to the \$100 minimum than the maximum.
7 In summary, Plaintiff believes that using \$100 as the comparator is appropriate but, in any event, this
8 case is well within the range of FCRA standalone disclosure claims approved by courts.

9 Courts regularly approve settlements where the recovery is less than one quarter of the
10 maximum potential realistic recovery. *E.g., Bravo v. Gale Triangle* (C.D. Cal. 2017) 2017 WL 708766
11 *9 (approving settlement where recovery was 7.5% of projected maximum recovery amount); *Officers*
12 *for Justice v. Civil Service Com'n of City & County of S.F.* (9th Cir. 1982) 688 F.2d 615, 628. Here, the
13 gross settlement amount is reasonable in comparison to the likely potential award at trial, which meets or
14 exceeds percentages routinely approved by courts.

15 The parties are fully aware of the risks and complexity of the case. The uncertain legal landscape
16 creates a substantial risk of proceeding to certification and beyond. Even if Plaintiff were to prevail in
17 certification, the costs for both parties would mount. Further, given that there is potentially in excess of
18 \$990,100 at issue (9,901 class members multiplied by at least \$100), although an award in that amount
19 might not be likely, the Parties could be expected to expend considerable resources litigating the matter.

20 There is the risk that this Court, a jury, or a reviewing court would find that Defendant's
21 conduct was not willful. The FCRA is not a strict liability statute. *Dalton v. Capital Associated Indus.*
22 (4th Cir. 2001) 257 F.3d 409, 417. A FCRA plaintiff can recover statutory damages only where the
23 defendant has acted willfully. 15 U.S.C. § 1681n(a)(1). Defendant contends that its conduct must have
24 been objectively unreasonable based on clearly established law at the time of the alleged violation to be
25 willful. *Safeco Ins. Co. of Am. v. Burr* (2007) 551 U.S. 47 ("a company subject to FCRA does not act
26 in reckless disregard of it unless the action is not only a violation under a reasonable reading of the
27 statute's terms, but shows that the company ran a risk of violating the law substantially greater than the
28 risk associated with a reading that was merely careless."). A finding of a mere negligent violation

1 would not permit Plaintiff or the putative class to obtain statutory damages, and Plaintiff and class
2 members who were hired likely could not seek actual damages – the only type of damages available for
3 a mere negligent violation.

4 In addition, Defendant contends that Plaintiff has risk that the claim would be deemed to be
5 time-barred in whole or in part, a contention that creates risk on both class certification and the merits.

6 Ultimately, in considering the risks of litigation, “a court may consider the vagaries of litigation
7 of immediate recovery by way of compromise to the mere possibility of relief, after protracted and
8 expensive litigation.” *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 482, 489
9 (internal quotations omitted). Here, the Settlement delivers immediate recovery for all Settlement Class
10 Members and avoids the risks and expenses of protracted litigation, including potential interlocutory
11 appeals and an appeal after a trial.

12 In light of these risks, as well as the hazards and expenses of carrying the case through trial,
13 Plaintiff’s counsel is of the opinion that the Settlement represents an excellent bargain for the Class. At
14 this juncture, the Settlement would entitle each Settlement Class Member to a significant recovery. In
15 contrast, if the case would continue in litigation, even if Plaintiff prevailed on a class certification
16 motion, any appeal by Defendant would prolong already protracted litigation and delay remedies to the
17 Class.

18 To review, although Plaintiff feels confident in prevailing were litigation to continue through
19 class certification and ultimately trial, considerable risks, delays and uncertainties nevertheless exist with
20 continued litigation. The Parties have achieved a fair Settlement that reflects a meaningful recovery for
21 Settlement Class Members and that merits the Court’s preliminary approval.

22 **D. THE COURT SHOULD GRANT THIS MOTION AND ISSUE AN ORDER**
23 **DIRECTING THAT NOTICE BE SENT**

24 “The notice given to the class must fairly apprise the class members of the terms of the proposed
25 compromise and of the options open to dissenting class members.” *Trotsky v. L.A. Fed. Sav. & Loan*
26 *Ass’n* (1975) 48 Cal.App.3d 134, 151-52. “The notice must be structured to enable class members to
27 decide whether to intervene or object, ‘opt out,’ or accept the settlement.” *Id.* at 152. Class notice must
28 strike a balance between thoroughness and the need to avoid unduly complicating the content of the

1 notice and confusing class members. *Wershba*, 91 Cal.App.4th at 252. Furthermore, an appropriate
2 notice is one which has a reasonable chance of reaching the class members. *Cartt v. Superior Court*
3 (1975) 50 Cal.App.3d 960, 974.

4 The Notice of Class Action Settlement explains in plain and easily understood language what
5 the case is about; the class definition and claims; the settlement amount and approximate individual
6 amount each class member will receive; the requested amounts to be paid to class counsel and as an
7 enhancement award to the class representative; the rights of class members to opt out or object to the
8 Settlement's terms and the process by which they can do so; the binding effect of the Settlement on
9 those who do not request exclusion, including a description of the claims being released; and the
10 particulars of the final fairness hearing.

11 The Parties' proposed plan for directing notice to the Class is also the best notice that is
12 practicable under the circumstances. Using last-known addresses provided by Defendants, the
13 Settlement Administrator will send the Class Notice by First Class U.S. Mail to all Class Members.
14 Further, the Settlement Administrator will perform skip traces to obtain the correct address of any Class
15 Members for whom the Notice is returned as undeliverable and will attempt re-mailings where new
16 addresses are ascertained.

17 **E. THE COURT SHOULD SET A HEARING FOR FINAL APPROVAL**

18 Finally, the Court should set a formal hearing to conduct an inquiry into the fairness of the
19 proposed settlement. Cal. Rule Ct. 3.769(e), (g). At the hearing, proponents of the Settlement may
20 explain and describe the terms and conditions and offer argument of settlement approval. Members of
21 the Settlement Class, or their counsel, may also appear and offer evidence and testimony in opposition
22 to the Stipulation of Settlement. The Parties request that the hearing on final approval of the settlement
23 be set for a date at least 150 days after preliminary approval is granted.

24 **VI. CONCLUSION**

25 For the foregoing reasons, the Parties respectfully submit that the Settlement's terms are fair,
26 adequate, and reasonable and that it is in the best interest of the Class Members. Under the applicable
27 class action criteria and guidelines, this Class should be conditionally certified, the Settlement should be
28 preliminarily approved, the Class should be notified regarding the Settlement, and the Court should

1 schedule a final approval hearing.

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3 DATED: December 8, 2023

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