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

CHARLES RODRIGUEZ, an individual, on
behalf of himself and all others similarly
situated,

Plaintiff,

v.

U.S. BANK NATIONAL ASSOCIATION,
dba U.S. Bank; and DOES 1 through 100,
inclusive

Defendants.

Case No. BC617356

CLASS ACTION

Assigned to: Hon. Amy D. Hogue; Dept. 7

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND PAGA
SETTLEMENT**

Date: March 9, 2022

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Dept.: 7

Action filed: April 15, 2016

Related Case: 19STCV17516

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1 **I. INTRODUCTION**

2 Plaintiffs Charles Rodriguez, Ali Malik, and Atefeh Yousefi (collectively “Plaintiffs”) seek
3 preliminary approval of the class and PAGA action settlement as outlined in the Joint Stipulation
4 of Class and Representative Action Settlement and Release (“Settlement Agreement” or
5 “Settlement”). (Decl. Hatcher, Ex. 1).¹

6 Subject to Court approval, Plaintiffs and Defendant U.S. Bank National Association
7 (“Defendant” or “U.S. Bank”) (collectively referred to as the “Parties”), have agreed to a class-
8 wide, non-reversionary gross settlement of Ten Million Seven Hundred Fifty-Thousand Dollars
9 (\$10,750,000.00) in exchange for a release of claims that is narrowly tailored to the facts and
10 claims asserted in three actions that will be consolidated by filing the proposed Fourth Amended
11 Complaint (“FAC”) in the instant action. These actions are: (1) the instant action (“*Rodriguez*”);
12 (2) *Ali Malik v. U.S. Bank National Association*, Los Angeles County Superior Court Case No.
13 19STCV17516 (“*Malik*”), which has already been related to the instant action, and (3) *Atefeh*
14 *Yousefi v. U.S. Bank National Association*, Southern District of California Case No. 3:20-cv-
15 01770-BAS-AGS (“*Yousefi*”) (all together, the “Actions”). The Parties reached the proposed
16 settlement after an in-depth investigation and analysis into the facts and legal issues raised in these
17 Actions. At all times, the Parties’ negotiations were adversarial, non-collusive and at arm’s length
18 with the assistance of an experienced wage and hour mediator.

19 The Settlement currently before this Court provides for an excellent outcome for
20 Defendant’s California based retail banking and non-retail banking non-exempt employees who
21 comprise the Settlement Class, consisting of approximately 13,431 individuals. The proposed
22 Settlement affords members of the Settlement Class considerable monetary relief without the
23 further expense, delay, and uncertainty of continued litigation. The non-reversionary settlement of
24 \$10,750,000.00 (“Gross Settlement Amount” or “GSA”) is inclusive of all payments to the
25 Participating Settlement Class Members and PAGA Group Members, the California Labor and
26 Workforce Development Agency (“LWDA”), Class Counsel, the Settlement Administrator, and

27 ¹ This Motion incorporates by reference the definitions in the Settlement Agreement. To the extent the terms are
28 defined in the Settlement Agreement, all defined terms contained herein shall have the same meaning as set forth in
the Settlement Agreement.

1 the Named Plaintiffs. Pursuant to the Settlement Agreement, Defendant will also pay, separate
2 from and in addition to the GSA, the employer-side payroll taxes on wage payments made from
3 the Net Settlement Amount. If approved as requested, the Settlement provides **the average class**
4 **member approximately \$507.44 to \$426.88498.04**, depending on the sub-class and exclusive of
5 PAGA civil penalties.

6 Plaintiffs and Class Counsel believe that the proposed settlement is fair, reasonable, and
7 adequate given the known facts and circumstances including, but not limited to, Plaintiffs' class-
8 wide allegations, Defendant's general denial thereof, the current status of the litigation, and the
9 risk and expense of continued litigation. (Decl. Hatcher ¶¶10), (Decl. Rosenthal ¶ 11); (Decl. Lee
10 ¶¶ 2, 3); (Decl. Marder ¶¶ 2, 3); (Decl. Agnew ¶¶ 2, 3); (Decl. Rodriguez ¶¶ 18, 12, 13); (Decl.
11 Malik ¶13); (Decl. Yousefi ¶ 10). Accordingly, Plaintiffs respectfully request that this Court (1)
12 grant preliminary approval of the proposed settlement; (2) appoint Simpluris, Inc. ("Simpluris" or
13 the "Settlement Administrator") as the Settlement Administrator; (3) provisionally certify the
14 Settlement Class for settlement purposes only; (4) order the mailing of the proposed Notice of
15 Settlement to the Settlement Class; (5) appoint the Named Plaintiffs in the FAC as the Class
16 Representatives; (6) appoint David P. Myers, Robert M. Kitson, and Jason Hatcher of The Myers
17 Law Group, A.P.C.; Larry W. Lee, Kristen M. Agnew, and Nicholas Rosenthal of Diversity Law
18 Group, P.C.; and William L. Marder of Polaris Law Group LLP, as Class Counsel; and (7) schedule
19 a final approval/fairness hearing.

20 **II. SUMMARY OF THE LITIGATION**

21 **A. Plaintiffs' Claims and Relevant Background**

22 **1. *Rodriguez Action***

23 Plaintiff Rodriguez filed a class action complaint on April 15, 2016 in Los Angeles
24 Superior Court, Case No. BC617356. Plaintiff Rodriguez's operative Third Amended Complaint
25 alleges claims for (1) Failure to Pay Minimum Wages, (2) Failure to Pay All Overtime Wages,
26 (3) Failure to Provide Meal Periods, (4) Failure to Provide Rest Periods, (5) Forced Forfeiture of
27 Vacation Pay, (6) Failure to Pay All Wages Due at Separation, (7) Failure to Provide Accurate
28 Wage Statements, (8) Record Keeping Violations, (9) Unfair Competition, (10) Declaratory Relief,

1 (11) PAGA Civil Penalties for All Underlying Alleged Labor Code Violations, and (12) PAGA
2 Civil Penalties for Record Keeping Violations. Plaintiff Rodriguez’s TAC asserts these claims on
3 behalf of himself and all other individuals who worked for Defendant in California as hourly non-
4 exempt retail banking employees.

5 During the pendency of the *Rodriguez* Action, Plaintiff Rodriguez filed a Motion to
6 Remand, a Notice of Related Case to the *Malik* Action, a Motion for Consolidation and Leave to
7 File a Third Amended Complaint, Motions to Compel Discovery, and a Motion to Certify Class
8 Action. Plaintiff Rodriguez conducted three separate Person Most Knowledgeable (“PMK”)
9 depositions and Plaintiff Rodriguez was deposed on three separate days. (Decl. Hatcher at ¶¶ 7-8).
10 Further, counsel for Plaintiff Rodriguez attended Plaintiff Malik’s deposition as well as two
11 separate PMK depositions in the *Malik* Action. (Decl. Hatcher at ¶¶ 7-8). Plaintiff Rodriguez
12 served Five Sets of Special Interrogatories; Four Sets of Request for Document Production;
13 Supplemental Interrogatory and Document Requests; and a Form Interrogatory Employment Set
14 One. (Decl. Hatcher at ¶¶ 7-8). This written discovery produced over a thousand pages of
15 documents related to the policies and practices at-issue as well as payroll records and timekeeping
16 records. (Decl. Hatcher at ¶¶ 7-8). Plaintiff Rodriguez engaged a *Belaire-West* style notice to
17 obtain the contact information of approximately 6,000 putative class members and then used this
18 information to perform surveys of putative class members’ experience related to the wage and hour
19 claims alleged. (Decl. Hatcher at ¶¶ 7-8). On November 16, 2020, Plaintiff Rodriguez filed a
20 Motion to Certify Class Action.

21 **2. *Malik* Action**

22 Plaintiff Malik filed a class action complaint on February 1, 2019 in San Mateo Superior
23 Court, Case No. 19CIV00693, containing overlapping putative class claims as alleged in the
24 *Rodriguez* Action. The *Malik* Action was transferred to Los Angeles Superior Court as Case No.
25 19STCV17516 and this Court deemed the *Malik* and *Rodriguez* matters related on August 2, 2019.
26 *Id.* The operative Complaint in the *Malik* Action alleges (1) Violations of Labor Code §226.7 due
27 to captive and non-duty free rest periods, (2) Violations of Labor Code §226(a); and (3) a
28 derivative Unfair Competition Law Claim. Plaintiff Malik’s operative Complaint is on behalf of

1 himself and all other individuals who worked for Defendant in California as non-exempt
2 employees.

3 Plaintiff Malik conducted two separate PMK depositions and was deposed. (Decl.
4 Rosenthal, ¶3). Further, counsel for Plaintiff Malik attended Plaintiff Rodriguez's depositions.
5 (Decl. Rosenthal, ¶3). Plaintiff Malik served two rounds of written discovery. (Decl. Rosenthal,
6 ¶3). This written discovery produced thousands of pages of documents related to the policies and
7 practices at-issue as well as payroll records and timekeeping records. (Decl. Rosenthal, ¶3). On
8 November 16, 2020, Plaintiff Malik filed a Motion to Certify Class Action.

9 **3. Yousefi Action**

10 Plaintiff Yousefi filed a class action complaint on July 2, 2020 in San Diego Superior
11 Court, Case No. 37-2020-00022823-CU-OE-CTL, alleging violations of Labor Code §§510 and
12 1194, Labor Code §§201-203, Labor Code §226, Business and Professions Code §17200, *et seq.*
13 Plaintiff Yousefi also asserted a claim for civil penalties under PAGA for the underlying alleged
14 Labor Code violations. The *Yousefi* matter was removed to the U.S. District Court for the Southern
15 District of California as Case No. 3:20-cv-01770-BAS-AGS on or about September 9, 2020.
16 Plaintiff Yousefi's operative Complaint is on behalf of herself and all other individuals who
17 worked for Defendant in California as non-exempt employees who were paid overtime or sick pay
18 and non-discretionary wages in the same workweek. In the *Yousefi* matter there was an exchange
19 of Initial Disclosures pursuant to Fed. R. Civ. Proc. Rule 26 and the parties attended a settlement
20 conference.

21 **B. Mediations and Evaluation of the Claims**

22 The parties engaged in global private mediation with Michael Loeb, Esq. on April 28, 2021.
23 (Decl. Hatcher ¶6); (Decl. Rosenthal ¶4). Mr. Loeb is a well-respected wage and hour class action
24 mediator. After a full day of mediation, the parties did not reach a settlement, but negotiations
25 continued by and through mediator Loeb. (Decl. Hatcher ¶6); (Decl. Rosenthal ¶4). On or about
26 May 21, 2021 the Parties agreed to a settlement in principle. (Decl. Hatcher ¶6); (Decl. Rosenthal
27 ¶4).

28 Prior to attending the mediation, Plaintiffs conducted a comprehensive investigation, and

1 litigation, into the facts and legal issues raised by these Actions. In addition to the extensive formal
2 discovery in this matter, Defendant provided informal discovery that included information relevant
3 to prepare a damages model. (Decl. Hatcher ¶¶7-8); (Decl. Rosenthal ¶5).

4 Prior to this, on January 9, 2019, Plaintiff Rodriguez and Defendant engaged in a full-day
5 mediation session with mediator Michael Loeb, Esq. that did not result in settlement. Before this
6 mediation, Defendant also engaged in informal discovery to supplement the then existing formal
7 discovery that, in part, allowed Plaintiff Rodriguez to prepare a damages model. (Decl. Hatcher
8 ¶¶6-7).

9 On July 31, 2020, Plaintiff Malik participated in private mediation with Defendant that was
10 unsuccessful. Before this mediation, Defendant also engaged in informal discovery to supplement
11 the then existing formal discovery that, in part, allowed Plaintiff Malik to prepare a damages
12 model. (Decl. Rosenthal ¶6).

13 Plaintiffs and Counsel have concluded, after taking into account sharply disputed factual
14 and legal issues involved in this litigation, the risks of further litigation, and the substantial benefits
15 to be received pursuant to the compromise and settlement of the litigation, that settlement on the
16 terms hereinafter set forth is in the best interest of the class members. (Decl. Hatcher at ¶9); (Decl.
17 Rosenthal at ¶7).

18 Defendant and Defense Counsel have concluded, after taking into account the sharply
19 disputed factual and legal issues involved in the litigation, the risks attending further defense, the
20 substantial expense and burden of protracted litigation, and their desire to put the controversy to
21 rest, that settlement on the terms hereinafter set forth is in the best interest of Defendant.

22 **III. Summary of the Proposed Settlement**

23 **A. Terms of the Settlement**

24 **1. The Settlement Class**

25 The Settlement Class consists of two sub-classes:

26 The “Retail Banking Settlement Class” which is defined as all individuals
27 who were employed by and performed work for U.S. Bank in any non-
28 exempt retail banking position in California at any time during the period
from April 15, 2012 until April 24, 2021.

And,

The “Non-Retail Banking Settlement Class” which is defined as all individuals who were employed by and performed work for U.S. Bank in any non-retail banking non-exempt hourly position in California who at any time during the period from July 2, 2017 until April 24, 2021 (a) received overtime in the same workweek as “AwardPrize”, “Best in Us”, “InvestInsur”, or “BuLineCls” pay, and/or (b) received sick pay in the same workweek as “AwardPrize”, “Best in Us”, “InvestInsur”, or “BuLineCls” pay and whose employment ended at any time between July 2, 2017 and April 24, 2021.

(Ex. 1 at ¶¶ 45 and 46). The Settlement Class represents approximately 13,431 individuals. (Ex. 1 at ¶ 61).

2. The Settlement Allocations

Under the terms of the Settlement, Defendant has agreed to pay a non-reversionary sum of \$10,750,000. (Ex. 1 at ¶13). The GSA includes all Individual Settlement Shares to the Participating Settlement Class Members; a PAGA civil penalty allocation of \$300,000;² court-approved attorneys’ fees not to exceed 33.33% of the GSA; litigation costs in an amount not to exceed \$70,000, subject to court approval; the Settlement Administration Costs in an amount not to exceed \$57,500; and Representative Service Awards to the Named Plaintiffs, subject to court approval, in total not to exceed \$50,000. (Ex. 1 at ¶¶ 13, 5, 4, 23, 52, 51):

Gross Settlement Amount	\$10,750,000.00
Class Counsel Fees	\$3,583,333.33
Class Counsel Expenses	\$70,000.00
PAGA Allocation LWDA	\$225,000.00
PAGA Allocation PAGA Group Members	\$75,000.00
Settlement Administration Costs	\$57,500.00
Plaintiff Rodriguez Service Award	\$20,000.00
Plaintiff Malik Service Award	\$20,000.00
Plaintiff Yousefi Service Award	\$10,000.00
Net Class Settlement Amount	\$6,689,166.67

Separate from and in addition to the GSA, Defendant will pay the employer’s share of payroll taxes. (Ex. 1 at ¶13). Furthermore, if the number of total unique Participating Settlement Class Members (“PSCM”) exceeds 14,774 (which is 10% more than 13,431 individuals), then the Net Class Settlement Amount (“NCSA” or “NSA”) shall increase by the same percentage that the

² “75 percent” or \$225,000 of the PAGA allocation is allocated to the LWDA and “25 percent” or \$75,000 is allocated to the PAGA Group Members.

number of total unique PSCM exceeds 14,774. (Ex. 1 at ¶ 61).

3. Settlement Shares to Participating Settlement Class Members

Each Settlement Class Member who does not timely opt-out of the Settlement (a PSCM) will receive a *pro rata* Individual Settlement Share of the NCSA pursuant to the sub-class that the PSCM belongs. (Ex. 1 at ¶ 62). Twenty-Five percent (25%) of the Individual Settlement Share is allocated as W-2 wages subject to reduction for typical withholdings and taxes and the remaining Seventy-Five percent (75%) as 1099 payments for penalties and interest. (Ex. 1 at ¶ 63).

The NSA will be split into two (2) funds: *Fund 1* for the Retail Banking Settlement Class; and *Fund 2* for the Non-Retail Banking Settlement Class. Fund 1 represents 90.00% of the NCSA and Fund 2 represents 10.00% of the NCSA. Although the payroll policies and practices were common and uniform, the NSA was split into two funds based on the Retail Banking Settlement Sub-class and Non-Retail Banking Settlement Sub-class to account for differences in the claims at-issue, as well as the period of time at-issue, for these sub-classes. For example, the Retail Banking Sub-class claims rest period violations based on captive and on-duty rest periods deriving from security and business needs related to the retail banking environment. This rest period claim was not alleged for the Non-Retail Banking Sub-class. By splitting the NSA into two funds to account for the differences in claims alleged, and releases, specific to the two sub-classes, the Settlement fairly accounts for and distributes settlement shares that are narrowly tailored to the same.

a. Retail Banking Settlement Sub-Class Settlement Share

Each Participating Retail Banking Settlement Class Member's Individual Settlement Share shall be calculated by (a) dividing Fund 1 by the total number of Pay Periods worked by all Retail Banking Settlement Class Members during the Retail Banking Class Period and (b) multiplying the result by the number of Pay Periods the Participating Retail Banking Settlement Class Member worked during the Retail Banking Class Period. (Ex. 1 at ¶ 62(a)). The estimated average gross Individual Settlement Share for the Retail Banking Settlement Sub-Class is \$507.44. (Decl. Hatcher at ¶11).

///

1 **b. Non-Retail Banking Settlement Sub-Class Settlement Share**

2 Each Participating Non-Retail Banking Settlement Class Member’s Individual Class
3 Settlement Share shall be calculated by (a) dividing Fund 2 by the total number of Pay Periods
4 worked by all Non-Retail Banking Settlement Class Members during the Non-Retail Banking
5 Class Period and (b) multiplying the result by the number of Pay Periods the Participating Non-
6 Retail Banking Settlement Class Member worked during the Non-Retail Banking Class Period.
7 The estimated average gross Individual Settlement Share for the Non-Retail Banking Settlement
8 Sub-Class is \$426.88. (Decl. Hatcher at ¶11).

9 **4. PAGA Group Members**

10 The PAGA Group Members consists of two sub-groups:

11 The “Retail Banking PAGA Group” which is defined as all individuals who
12 were employed by U.S. Bank in any non-exempt retail banking position in
13 California at any time during the period from April 5, 2015 until April 24,
14 2021.

15 And,

16 The “Non-Retail Banking PAGA Group” which is defined as all individuals
17 who were employed by U.S. Bank in any non-retail banking non-exempt
18 hourly position in California who at any time during the period from May
19 19, 2017 until April 24, 2021 (a) received overtime in the same workweek
20 as “AwardPrize”, “Best in Us”, “InvestInsur”, or “BuLineCls” pay, and/or
21 (b) received sick pay in the same workweek as “AwardPrize”, “Best in Us”,
22 “InvestInsur”, or “BuLineCls” pay and whose employment ended at any
23 time between May 19, 2019 and April 24, 2021.

24 (Ex. 1 at ¶¶ 26 and 27).

25 **5. Individual PAGA Payments**

26 The PAGA Group Members Amount (“PGMA”) will be split into two (2) funds: *Fund A*
27 for the Retail Banking PAGA Group and *Fund B* for the Non-Retail Banking PAGA Group. Fund
28 A represents 90.00% of the PGMA and Fund B represents 10.00% of the PGMA.

a. Retail Banking PAGA Group

 Each Retail Banking PAGA Group Member’s Individual PAGA Payment shall be
calculated by (a) dividing Fund A by the total number of Pay Periods worked by all Retail Banking
PAGA Group Members during the Retail Banking PAGA Period and (b) multiplying the result by

1 the number of Pay Periods the Retail Banking PAGA Group Member worked during the Retail
2 Banking PAGA Period. (Ex. 1 at ¶ 64(a)).

3 **b. Non-Retail Banking PAGA Group**

4 Each Participating Non-Retail Banking PAGA Group Member's Individual PAGA
5 Payment shall be calculated by (a) dividing Fund B by the total number of Pay Periods worked by
6 all Non-Retail Banking PAGA Group Members during the Non-Retail Banking PAGA Period and
7 (b) multiplying the result by the number of Pay Periods the Non-Retail Banking PAGA Group
8 Member worked during the Non-Retail Banking PAGA Period. (Ex. 1 at ¶ 64(b)).

9 **B. Proposed Form of Notice to the Class**

10 In accordance with the Settlement Agreement, all Settlement Class Members will be mailed
11 a Notice of Settlement that includes, but is not limited to, information regarding the nature of the
12 litigation; a summary of the terms of the Settlement Agreement; the definitions of the Settlement
13 Class and Settlement Class Member Sub-Classes; the estimated cost for administration of the
14 settlement; information regarding payments from the GSA; the total number of Pay Periods
15 worked by the Settlement Class Member; the Settlement Class Member's estimated Individual
16 Settlement Share; the formula for calculating Individual Settlement Shares; the dates of the Class
17 Period; instructions for requesting exclusion from or objecting to the settlement, as well as the
18 deadlines by which Class Members must postmark such requests or objections; the date, time and
19 location of the Final Approval/Fairness Hearing; and the claims to be released by Participating
20 Class Members. (Ex. 1 at Exhibit A).

21 The Settlement Administrator is to mail the Notice of Settlement to all Settlement Class
22 Members via regular First-Class U.S. Mail within 10 calendar days of receiving the Class List
23 from Defendant. (Ex. 1 at ¶ 54(b)). For Class Notices that are returned as non-deliverable on or
24 before the Response Deadline, the Settlement Administrator will take all reasonable steps, such as
25 by performing skip-tracing and other reasonable searches to determine the correct address. (*Id.* at
26 ¶ 54(c)).

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1 **C. Proposed Settlement Class and Named Plaintiffs Releases**

2 Pursuant to the terms of the Settlement, as of the Effective Date and in consideration of the
3 Settlement payments, the following releases will become effective as to the Released Parties
4 against the Settlement Class and named Plaintiffs.

5 **1. Released Parties**

6 Under the Settlement terms, the Released Parties means Defendant; its parent or subsidiary
7 corporations; each of their present, former, or future owners, officers, directors, shareholders,
8 partners, employees, insurers, successors, predecessors, contractors, assigns, and managing agents;
9 any and all agents, legal representatives and/or attorneys of all of the foregoing entities and
10 individuals; and any entities that Plaintiffs, any Settlement Class Member, and/or any PAGA
11 Group Member may assert are joint employers with U.S. Bank. (Ex. 1 at ¶ 34).

12 **2. Retail Banking Class Released Claims**

13 All PSCM under the Retail Banking Class will expressly release and forever discharge any
14 and all claims, known or unknown, for and/or relating to: rest periods; meal periods; minimum
15 wages; overtime wages; pay for all hours worked, including but not limited to alleged off-the-
16 clock work; proper calculation of the regular rate of pay, including for purposes of overtime pay
17 and/or sick pay; the rate of payment for sick leave; underpayment of sick leave; timeliness of
18 wages; payment of wages at termination; waiting time penalties; vacation pay; itemized wage
19 statements and/or accuracy of wage statements; provision of and/or allowing for
20 inspection/copying of personnel documents, signed documents, payroll records, or any other
21 records; recordkeeping; unfair competition; any unpaid wages or compensation related to any or
22 all of the foregoing; any premium payments related to any or all the foregoing; restitution for any
23 of the foregoing; any penalties, including statutory and civil penalties, related to any or all the
24 foregoing; attorneys' fees or costs related to any or all of the foregoing; interest related to any of
25 the foregoing; and/or any other damages or amounts related to any or all of the foregoing. The
26 release includes: all claims that were asserted in any and/or all of the complaints in *Rodriguez*,
27 *Malik*, and *Yousefi*; that were asserted in any and/or all of the letters sent to the LWDA by
28 Rodriguez, Malik, and Yousefi; and/or that could have been asserted in *Rodriguez*, *Malik*, and

1 *Yousefi* based on the facts and/or allegations in any complaint in *Rodriguez, Malik, and Yousefi*.
2 The release includes any and all claims pursuant to: California Business and Professions Code
3 section 17200 et seq.; California Labor Code sections 200-204, 218.5, 218.6, 226, 226.3, 226.7,
4 227.3, 246-248.5, 510, 512, 1194, 1194.2, 1197, 1197.1, 1198, and 1198.5; the California IWC
5 Wage Orders; and the Fair Labor Standards Act (“FLSA”). The release shall include all the above
6 claims through April 24, 2021. (Ex. 1 at ¶ 36).

7 **3. Non-Retail Banking Class Released Claims**

8 All PSCM under the Non-Retail Banking Class will expressly release and forever discharge
9 any and all claims, known or unknown, for and/or relating to: proper calculation of the regular rate
10 of pay, including for purposes of overtime pay and/or sick pay; the rate of payment for sick leave;
11 underpayment of sick leave; payment of wages at termination; waiting time penalties; itemized
12 wage statements and/or accuracy of wage statements; unfair competition; any unpaid wages or
13 compensation related to any or all of the foregoing; any premium payments related to any or all
14 the foregoing; restitution for any of the foregoing; any penalties, including statutory and civil
15 penalties, related to any or all the foregoing; attorneys’ fees or costs related to any or all of the
16 foregoing; interest related to any of the foregoing; and/or any other damages or amounts related to
17 any or all of the foregoing. The release includes all claims that were asserted in the complaint in
18 *Yousefi*, that were asserted in any and/or all of the letters sent to the LWDA by *Yousefi*, and/or
19 that could have been asserted in *Yousefi* based on the facts and/or allegations in the *Yousefi*
20 complaint. The release includes any and all claims pursuant to: California Business and
21 Professions Code section 17200 et seq.; California Labor Code sections 200-204, 218.5, 218.6,
22 226, 226.3, 246-248.5, 510, 1194; the California IWC Wage Orders; and the FLSA. The release
23 shall include all the above claims through April 24, 2021. (Ex. 1 at ¶ 18).

24 Notwithstanding this, all *Tomlinson/Sharkey* Employees shall release the Non-Retail
25 Banking Class Released Claims as to the Released Parties, except that, during the period from
26 March 19, 2018 to April 24, 2021, under the Settlement they shall be deemed to release only any
27 and all claims, known or unknown, for and/or relating to: the proper calculation of the regular rate
28 of pay for purposes of sick pay; the rate of payment for sick leave; and underpayment of sick

1 leave.³ (Ex. 1 at ¶ 73(c)). The *Tomlinson/Sharkey* Employees shall be deemed to release all the
2 Non-Retail Banking Class Released Claims against the Released Parties through March 18, 2018.
3 (Id.). This provision protects the existing claims for the *Tomlinson/Sharkey* Employees that are
4 being litigated in separate matters by effectively excluding those claims from this Settlement.

5 **4. Retail Banking PAGA Released Claims.**

6 All Retail Banking PAGA Group Members will expressly release and forever discharge
7 any and all claims, known and unknown, for civil penalties under the California Labor Code
8 Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*, that were asserted in any
9 and/or all of the complaints in *Rodriguez, Malik, and Yousefi*; that were asserted in any and/or all
10 of the letters sent to the LWDA by Rodriguez, Malik, and Yousefi; and/or that could have been
11 asserted in *Rodriguez, Malik, and Yousefi* based on the facts and/or allegations in any complaint
12 and/or LWDA letter in *Rodriguez, Malik, and Yousefi*. The release includes, but is not limited to,
13 claims for PAGA civil penalties premised on: California Labor Code sections 200-204, 218.5,
14 218.6, 226, 226.3, 226.7, 227.3, 246-248.5, 510, 512, 1194, 1194.2, 1197, 1197.1, and 1198; rest
15 periods; meal periods; minimum wages; overtime wages; pay for all hours worked, including but
16 not limited to alleged off-the-clock work; proper calculation of the regular rate of pay, including
17 for purposes of overtime pay and/or sick pay; the rate of payment for sick leave; underpayment of
18 sick leave; timeliness of wages; payment of wages at termination; waiting time penalties; vacation
19 pay; itemized wage statements and/or accuracy of wage statements; provision of and/or allowing
20 for inspection/copying of personnel documents, signed documents, payroll records, or any other
21 records; recordkeeping; and attorneys' fees or costs related to any or all of the foregoing. The
22 release shall include all the above claims through April 24, 2021. (Ex. 1 at ¶ 38).

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26 ³ “*Tomlinson/Sharkey* Employees” means each member of the Non-Retail Banking Settlement Class who is also
27 included in the employee group at issue in the cases of *Tomlinson v. U.S. Bancorp et al.*, Los Angeles County Superior
28 Court Case No. 19STCV09493 and *Sharkey v. U.S. Bancorp et al.*, Los Angeles County Superior Court Case No.
20STCV19049 (i.e., non-exempt employees in the State of California who worked for one of Defendant’s Mortgage
Processing Centers).

1 **5. Non-Retail Banking PAGA Released Claims.**

2 All Non-Retail Banking PAGA Group Members will expressly release and forever
3 discharge any and all claims, known and unknown, for civil penalties under the California Labor
4 Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*, that were asserted in
5 the complaint in *Yousefi*, that were asserted in any and/or all of the letters sent to the LWDA by
6 Yousefi, and/or that could have been asserted in *Yousefi* based on the facts and/or allegations in
7 the *Yousefi* complaint or LWDA letters. The release includes, but is not limited to, claims for
8 PAGA civil penalties premised on: California Labor Code sections 200-204, 218.5, 218.6, 226,
9 226.3, 246-248.5, 510, and 1194; proper calculation of the regular rate of pay, including for
10 purposes of overtime pay and/or sick pay; the rate of payment for sick leave; underpayment of sick
11 leave; payment of wages at termination; waiting time penalties; itemized wage statements and/or
12 accuracy of wage statements; and attorneys' fees or costs related to any or all of the foregoing.
13 The release shall include all the above claims through April 24, 2021. (Ex. 1 at ¶ 21).

14 Notwithstanding this, all *Tomlinson/Sharkey* Employees shall release only claims for civil
15 penalties under PAGA premised on: the proper calculation of the regular rate of pay for purposes
16 of sick pay; the rate of payment for sick leave; and underpayment of sick leave against the Released
17 Parties. (Ex. 1 at ¶ 74(c)).

18 **6. No PAGA Opt-Out**

19 No PAGA Group Member may opt out of or be excluded from participating in the
20 settlement of the Retail Banking PAGA Released Claims or the Non-Retail Banking PAGA
21 Released Claims. All PAGA Group Members shall: (a) be bound by the judgment entered herein
22 and will have released the Retail Banking PAGA Released Claims or the Non-Retail Banking
23 PAGA Released Claims (as applicable) if/when the Court grants final approval of the settlement;
24 and (b) be mailed his/her respective portion of the PAGA Amount. If the Court grants final
25 approval of the Settlement, the occurrence of the Effective Date shall forever bar Plaintiffs, the
26 LWDA, and any other representative, proxy, or agent thereof, including but not limited to any and
27 all PAGA Group Members from pursuing any action pursuant to PAGA against the Released
28 Parties for the Retail Banking PAGA Released Claims or the Non-Retail Banking PAGA Released

1 Claims. (Ex. 1 at ¶ 59). The Class Notice effectively informs the Settlement Class that even if the
2 Settlement Class Member opts-out of the Class settlement he/she will not be opted-out of the
3 PAGA settlement and still be bound by the PAGA Release. (Ex. 1 at Ex. A).

4 **7. Named Plaintiffs Released Claims**

5 As part of, and in exchange for, the proposed Representative Service Awards each named
6 Plaintiff, and only the named Plaintiffs, will expressly release and forever discharge any and all
7 known and unknown claims against the Released Parties pursuant to Civil Code §1542. (Ex. 1 at
8 ¶ 75).

9 **8. Fourth Amended Complaint**

10 The Settlement includes that Plaintiffs shall file a Fourth Amended Complaint (“FAC”) in
11 the *Rodriguez* matter as attached as Exhibit B to the Settlement. (Ex. 1 at ¶ 70). The FAC
12 effectually consolidates the *Rodriguez*, *Malik*, and *Yousefi* matters for settlement purposes only by
13 (a) adding Plaintiff Malik and Plaintiff Yousefi as named Plaintiffs in *Rodriguez*; and (b) including
14 all the factual allegations and claims currently alleged in the operative complaints across the
15 *Rodriguez*, *Malik*, and *Yousefi* matters. (Id.). However, if the Settlement does not obtain
16 Preliminary and Final Approval, Plaintiffs will withdraw the FAC and it will be void *ab initio*.
17 (Id.).

18 **IV. LEGAL STANDARD**

19 **A. Approval of Class Action Settlements**

20 California courts favor settlement, particularly in class actions and other complex actions
21 where substantial resources may be conserved by avoiding the time, costs, and rigors of protracted
22 formal litigation. *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal.App.4th 1135,
23 1151 (2000). Rule 3.769(a) of the California Rules of Court provides that the Court must review
24 and approve any settlement of class litigation. *See also Dunk v. Ford Motor Co.*, 48 Cal.App.4th
25 1794, 1800 (1996). Court approval of a class action settlement is a two-step process, including a
26 preliminary review by the court and a subsequent final review and approval by the court after
27 notice has been distributed to the class members for their comment or objections. Cal. R. Court,
28 R. 3.769(c)-(f); *see also Manual for Complex Litigation* (4th Ed. 2004) Federal Judicial Center §

1 21.632. In the event the court has not yet certified the action as a class action when settlement is
2 reached, the court must certify the class according to the standards set out in California Code of
3 Civil Procedure § 382, in addition to ordering the settlement notice to be distributed. Cal. R. Court,
4 R. 3.769(d).

5 Courts have broad discretion to approve a proposed settlement. *Wershba v. Apple*
6 *Computer, Inc.*, 91 Cal.App.4th 224, 234-35 (2001). At the preliminary approval stage, the court's
7 review is generally "limited to the extent necessary to reach a reasoned judgment that the
8 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
9 parties, and that the settlement, taken as a whole, is fair, reasonable, and adequate to all concerned."
10 *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982). "The strength of the
11 findings made by a judge at a preliminary hearing or conference concerning a tentative settlement
12 proposal may vary. The court may find that the settlement proposal contains some merit, is within
13 the range of reasonableness required for a settlement offer or is presumptively valid subject only
14 to objections that may be raised at a final hearing." 4 Alba Conte & Herbert B. Newberg, *Newberg*
15 *on Class Actions*, (4th Ed. 2009) § 11.26. Where a class action settlement is determined to be
16 within the "range of reasonableness," the court should grant preliminary approval. *Hernandez v.*
17 *Vitamin Shoppe Indus., Inc.*, 174 Cal.App.4th 1441, 1446 (2009).

18 **V. LEGAL ARGUMENT**

19 **A. The Court Should Grant Preliminary Approval of the Settlement**

20 To determine whether a settlement should be approved, the court applies several well-
21 recognized factors including, but not limited to, the strength of the plaintiff's case, expense,
22 complexity and likely duration of further litigation, the risk of maintaining class action status
23 through trial, the amount offered in the settlement, the extent of discovery completed and the state
24 of the proceeds, the experience and views of counsel, and the reaction of class members to the
25 proposed settlement. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal.App.4th 399,
26 407 (2010) (citing *Kullar v. Footlocker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008)).

27 Courts recognize that the strength of the plaintiffs' case on the merits balanced against the
28 amount offered in the settlement as the most important factor to such determination. *Id.*

1 Accordingly, the court must be presented with “...basic information about the nature and
2 magnitude of the claims in question and the basis for concluding that the consideration being paid
3 for the release of claims represents a reasonable compromise,” to ensure that the court can
4 independently consider what is being received for the release of claims in light of all the strengths
5 and weaknesses presented in the litigation. *Id.* at 408.

6 **1. The Proposed Settlement is Fair, Reasonable, and Adequate**

7 While the proponent of the settlement bears the burden of showing that the proposed
8 settlement is fair and reasonable, California courts generally recognize a presumption of fairness
9 where (1) the settlement is reached through arm’s length bargaining; (2) investigation and
10 discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is
11 experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk*, 48 Cal.App.4th
12 at 1802.

13 **a. The Settlement is the Product of Arm’s-Length Negotiations**

14 There can be no doubt as to the fairness of the proposed Settlement. In this case, Plaintiffs
15 and Class Counsel engaged in three (3) separate private mediations and settlement negotiations
16 that occurred after they had possessed sufficient information and documentation to make an
17 informed decision and conducted a comprehensive review and analysis of the facts, potential
18 damages, and legal issues raised by the Actions. (Decl. Hatcher at ¶6); (Decl. Rosenthal at ¶8).
19 The final private mediation with Michael Loeb, Esq., on April 28, 2021, and subsequent settlement
20 negotiations through Loeb, resulted in the proposed Settlement. The Settlement is subsequent to
21 Plaintiffs Rodriguez and Malik filing Motions to Certify Class Actions with this Court. Through
22 the assistance of private mediator Loeb, a well-informed, independent, and well-respected wage
23 and hour class action mediator, the parties were able to reach the proposed Settlement. (Decl.
24 Hatcher at ¶6); (Decl. Rosenthal at ¶8). Thus, the settlement negotiations in this matter were at
25 arm’s length and non-collusive. (Decl. Hatcher at ¶6); (Decl. Rosenthal at ¶8).

26 In reaching the proposed Settlement, Plaintiffs and Class Counsel’s negotiation efforts took
27 into consideration relevant factors such as the size of the class, the information and documents
28 obtained through informal and formal discovery, the common experience of Plaintiffs, Defendant’s

1 projected liability, the expense of continued litigation, the uncertainty inherent in litigating
2 complex matters, such as obtaining and maintaining class certification, Defendant's policies
3 including its timekeeping and compensation practices, and the potential for appeals. (Decl. Hatcher
4 at ¶¶ 9, 8, 7); (Decl. Rosenthal at ¶9). Based on Class Counsel's experience handling similar such
5 claims, they are of the opinion that the proposed settlement represents a favorable resolution for
6 the Settlement Class as it provides for compensation to the absent class members for Defendant's
7 alleged violations without the further expense and uncertainty of further litigation. (Decl. Hatcher
8 at ¶¶ 9, 8, 7, 4); (Decl. Rosenthal at ¶9). Moreover, the proposed settlement resolves any potential
9 penalties against Defendant for its allegedly unlawful conduct and also compensates Plaintiffs and
10 the Settlement Class fairly for their claims. *See generally* Settlement Agreement. Accordingly,
11 there can be no doubt that the proposed Settlement before the Court is the product of thorough
12 arm's length and non-collusive negotiations between the Parties, who participated in two full-days
13 of mediation with well-respected mediator Loeb, and one day with private mediator Lisa Klerman,
14 and based thereon the Court should presume the fairness of the proposed settlement.

15 **b. Sufficient Investigation and Discovery Has Been Conducted**

16 Prior to attending the April 2021 mediation with Loeb, Plaintiffs conducted a
17 comprehensive investigation into the facts and legal issues raised by these Actions. Plaintiffs'
18 investigation included requesting documents relating to Defendant's compensation, meal and rest
19 break policies, paid leave, overtime, wage statements, wage and hour training materials,
20 timekeeping practices for non-exempt employees, payroll and timekeeping data to permit Plaintiffs
21 to prepare a damages model. (Decl. Hatcher at ¶¶ 7-8); (Decl. Rosenthal at ¶10). Class Counsel
22 conducted five (5) separate days of depositions of Defendant's employees, Defendant deposed
23 Plaintiff Malik once and deposed Plaintiff Rodriguez three times. (Decl. Hatcher at ¶7); (Decl.
24 Rosenthal at ¶5). Defendant also provided information concerning security protocols. The Parties
25 participated in numerous rounds of written discovery that included meet and confer efforts to
26 produce supplemental responses related to the claims at-issue. Such requests resulted in Defendant
27 providing Class Counsel with thousands of pages of documents. (Decl. Hatcher at ¶¶ 7-8); (Decl.
28 Rosenthal at ¶10). Class Counsel also obtained a partial putative class list of over 6,000 employees

1 and conducted multiple rounds of survey questionnaires with the putative class members regarding
2 their experiences in relation to the claims at-issue. (Decl. Hatcher at ¶7). Class Counsel thoroughly
3 reviewed and analyzed the information, documents and data obtained in connection with Plaintiffs'
4 and the putative class's claims. (Decl. Hatcher at ¶9); (Decl. Rosenthal at ¶10). Additionally, at
5 the mediation each side apprised the other of their respective factual contentions, legal theories
6 and defenses, which were extensively discussed at the mediation with Loeb. Thus, Plaintiffs and
7 Class Counsel obtained sufficient information to adequately evaluate the merits of the claims
8 raised by the Actions, Defendant's defenses, and projected liability. Accordingly, this Court should
9 presume the fairness of the proposed settlement.

10 Moreover, despite the presumed fairness of the settlement, under the terms of the
11 Settlement Agreement, each Class Member will have the opportunity, upon reviewing the Class
12 Notice, to either exclude themselves from the settlement or object to the terms of the settlement.
13 (Ex. 1 at ¶¶ Agreement at ¶¶ 56, 57). Therefore, Class Members will be provided with the
14 opportunity to express their views and opinions regarding the proposed settlement. Accordingly,
15 the Court will have all information necessary at the Final Approval/Fairness Hearing to finally
16 determine whether the settlement is fair, adequate and reasonable.

17 **c. Class Counsel is Experienced in Similar Litigation**

18 Class Counsel's experience and success in similar wage and hour class action litigation
19 further supports the fairness of the proposed settlement. *See* (Decl. Lee at ¶¶ 3-6); (Decl. Agnew
20 ¶¶ 3-9); (Decl. Hatcher at ¶¶ 9, 8, 7, 4); (Decl. Marder at ¶¶ 3-11); (Decl. Rosenthal at ¶11, 18-19).
21 To date, Class Counsel has collectively handled hundreds of class action and complex cases, the
22 majority of which they served as Class Counsel. *See Id.* Class Counsel relied on their extensive
23 experience when negotiating the proposed settlement. (Decl. Hatcher at ¶¶ 9, 8, 7, 4); (Decl.
24 Rosenthal at ¶11, 18-19). As discussed above, Class Counsel's settlement negotiations were
25 conducted with consideration given to the class size, the information and documentation obtained
26 in formal and informal discovery, the common experience of Plaintiffs and other putative class
27 members, Defendant's general denial of any wrongdoing, and the uncertainty, risk, expense and
28 delay associated with litigating the Actions through trial, including the risks of obtaining and

maintaining class certification through trial and the potential for appeals. (Decl. Hatcher at ¶¶ 10, 9, 8, 7); (Decl. Rosenthal at ¶¶ 11, 18-19). Class Counsel also considered the just nature of the proposed non-reversionary settlement, which requires Defendant to remit any unclaimed funds to the California State Controller's Office, Unclaimed Property Division in the name of the Class Member. (Ex. 1 at ¶ 68). Therefore, Defendant is required to pay the entire Gross Settlement Amount and in addition separately pay the employer's share of payroll taxes.

Based on the foregoing, the proposed settlement should be presumed fair since it was reached as the result of arm's length negotiations, sufficient investigation and discovery was conducted, and Class Counsel is highly experienced in similar wage and hour class litigation. Moreover, the Court will possess the necessary information as to the percentage of exclusions and objectors at the time of the Final Approval/Fairness Hearing.

2. Benefits of the Settlement and the Risks of Continued Litigation

This proposed settlement is fair and reasonable and comparable to similar class action settlements involving these types of claims. Based on Class Counsel's review and analysis of the information and documentation obtained in these Actions, Class Counsel anticipates that if these matters were certified as class actions, proceeded to trial, and resulted in verdicts for Plaintiffs and the Class Members, Defendant's reasonable exposure for the claims at-issue is approximately \$272,660,681.00. However, for the reasons described below, the Court might ultimately determine the Claims are not suitable for class certification or would be subject to possible decertification after initially granting class certification. (Decl. Hatcher at ¶ 9); (Decl. Rosenthal at ¶ 13). Under the proposed settlement, Class Members will avoid the risks of litigation (including the possibility that class certification will be denied and no relief will be available to the class members) and receive in exchange for a narrowly tailored release of claims a *pro rata* share of the NCSA based on the total number of Pay Periods they worked. (Ex. 1 at ¶ 62). Additionally, all unclaimed funds will be remitted to the California State Controller's Office, Unclaimed Property Division in the name of the Class Member. (Ex. 1 at ¶ 68); *see also* Code Civ. Proc. § 384.

Class Counsel are of the opinion that the proposed settlement is fair, reasonable and adequate in light the following: Plaintiffs contend that Defendant engaged in a systematic course

1 of illegal employment and payroll practices and policies, which were applied to all current and
2 former non-exempt employees of Defendant in California, and as a result of which, with respect
3 to all Class Members, Defendant failed to provide legally compliant duty free rest periods, timely
4 pay all wages due, including minimum wages and overtime wages at the correct regular rate of
5 pay, failed to pay all penalties and premiums due, failed to provide legally compliant meal periods,
6 failed to pay sick leave at the regular rate of pay, failed to maintain required records, failed to
7 furnish accurate itemized wage statements, and failed to pay all wages due to discharged and
8 quitting employees; Defendant denies Plaintiffs' claims and has asserted various defenses thereof;
9 PSCM will receive compensation for Defendant's alleged violations without further delay; the
10 release of claims is carefully crafted to only resolve the claims that were or could have been
11 asserted based on the facts of the operative complaints; the uncertainty of the outcome, risk and
12 expense of litigation in complex class actions; and that no amount of the Gross Settlement Amount
13 will revert back to Defendant, among other things. (Decl. Hatcher at ¶¶ 10, 9); (Decl. Rosenthal at
14 ¶14). The Settlement accounts for, and is fair and reasonable in light of, the facts and legal
15 arguments that offer support to Defendant's position with respect to each of the claims, as
16 described below.

17 **On-Duty and Captive Rest Periods.** Defendant maintains that its written policy regarding
18 rest periods complies (and has complied throughout the Class Period) with California law. In its
19 written policies, Defendant informed Class Members that they are entitled to take uninterrupted
20 10-minute paid rest breaks. Defendant maintains that although its written policy states that
21 employees may be required to remain on the premises during rest breaks, this is not unlawful.
22 Notwithstanding this, Plaintiffs maintain that Defendant failed to provide compliant rest periods
23 because Defendant's full policy and practice was to discourage employees from leaving the retail
24 branch store for rest periods. This includes training managers on such a practice. Defendant
25 contends that this practice is not unlawful and the parties have provided competing support for
26 their respective positions. Further, in July 2018, Defendant announced that it changed its rest break
27 practice to allow California employees the option to leave the premises during the rest breaks.
28 Plaintiffs contend that remaining on the premises for rest breaks establishes unlawful captive and

1 on-duty rest periods as Class Members were on call during this time and Defendant vigorously
2 disputes this contention. Moreover, Plaintiff contends that when only two employees were staffed
3 at a branch, Defendant's policy mandated that two employees must remain on the premises for rest
4 periods. Defendant contends this is not unlawful. Plaintiffs' contention is based on both company
5 documents as well as the testimony of Defendant's Person Most Qualified. Defendant further
6 contends that even if this violates *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257,
7 that opinion was issued in 2016 and was not retroactive. Moreover, Defendant argues that issues
8 of predominance would preclude class certification in this case. At a 100% violation rate, for every
9 shift regardless of the number of employees working that particular shift, Plaintiffs' estimated
10 Defendant's exposure to be \$105,540,563. Conversely, Plaintiff estimated Defendant's exposure
11 for shifts where the branch was only staffed with two employees was \$6,319,267. Given the
12 aforementioned challenges, including the potential that the Class would not be certified or later
13 decertified, this claim was significantly discounted.

14 **Meal Period Penalty Waiver.** Defendant maintains that its written policy regarding meal
15 periods comply with California law. In its written policy, Defendant informed Class Members that
16 they are entitled to take an uninterrupted, duty free, 30-minute meal period before the 5th hour
17 worked. However, Defendant's policy provides that if an employee wishes to take his or her meal
18 period after the end of the 5th hour of work, and the manager agrees, the employee may check a
19 "Meal Election" box on their timesheet to indicate they voluntarily waived the timing of their meal
20 period without incurring a meal period pay remedy. Defendant contends this is lawful because
21 under *Brinker* an employer is not required to police meal periods and ensure no work thereafter is
22 performed. Plaintiffs contend that this practice discourages timely meal periods and that this
23 alleged "waiver" is only available when *it supports the bank's needs* based on the PMK testimony.
24 Defendant disputes Plaintiffs' characterization of its written meal period policy and the referenced
25 PMK testimony. The parties dispute whether these records evidence a rebuttable presumption of a
26 violation under *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, 75 or evidence of a voluntary
27 waiver of the timing of the meal period. Moreover, Defendant argues that issues of predominance
28 would preclude class certification. Based on the records in this case, Plaintiffs estimated that

1 Defendant's exposure here was \$2,292,502. Given these challenges, including the potential that
2 the Class would not be certified or later decertified, this claim was significantly discounted.

3 **Off-the-Clock and Falsely Recorded Meal Period Claims.** Defendant maintains that it
4 has a valid policy and practice prohibiting off-the-clock work and false reporting on time records.
5 Plaintiffs contend that Defendant's practice instructed Class Members to record duty-free meal
6 periods even though the Class Members performed work. Plaintiffs contend that Defendant used
7 a handwritten timekeeping system to more easily manipulate the time records for this practice of
8 off-the-clock work and falsely recorded meal periods. Defendant disputes this. Based on partial
9 class data surveys, Plaintiffs estimated Defendants' exposure here to be approximately
10 \$106,983,235. Defendant contends that these claims suffer significant commonality,
11 predominance and manageability issues given the size of the class that would defeat class
12 certification—most specifically related to claims of individual issues of proof for liability of these
13 claims. Given these challenges, including the potential that the Class would not be certified or later
14 decertified, this claim was significantly discounted.

15 **Regular Rate Claims.** Plaintiffs contend that Defendant did not include
16 incentive/bonus/additional pay in the regular rate calculation for overtime and sick pay purposes.
17 Defendant argues that it properly calculated the regular rate for overtime by contending that (i) the
18 additional pay were overpayments based on an auto pay system that should not have been included
19 in the regular rate of pay and (ii) Defendant properly included "spiff" payments and other bonus
20 payments in the regular rate calculation or retroactive overtime payments. The attestation on
21 Defendant's timesheets provide an authorization of corrections (additions or subtractions) in
22 subsequent pay periods for variances determined. Given this, Plaintiffs estimated Defendant's
23 exposure for unpaid wages due to the regular rate of pay to be nominal.

24 **Waiting Time Penalties and Wage Statement Violations.** Plaintiffs contend that the
25 alleged violations for rest period, meal period, off-the-clock claims, and regular rate claims gives
26 rise to waiting time penalties under Labor Code §203 and wage statement violations under Labor
27 Code §226. Separate from the merits of these claims, Defendant contends a good faith affirmative
28 defense precludes the same. Further, Defendant contends that meal and rest period violations do

not give rise to waiting time penalties and that the Supreme Court will affirm the opinion in *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal.App.5th 444; Supreme Court Case No.: S258966. Moreover, given the derivative nature of these claims, Defendant contends that these claims will fail certification because the underlying claims would not be certified. Plaintiffs' estimated Defendant's exposure here to be \$40,268,381 for waiting time penalties and \$37,576,000 for wage statement violations. Given these challenges, this claim was significantly discounted.

Remaining Claims. Plaintiffs' complaint contends vacation time and pay violations under the factual theory that Class Members were forced to take vacations at the end of the year in order to avoid having to pay the employees these earned wages at a later date. Defendant contends that this is not unlawful because any forced vacation days before the end of the year were paid and thus the Class Members suffered no injury. That is, there is no injury that the Class Member was required to use paid vacation time before the next year. Defendant contends that this is not a forfeiture of vested vacation time upon termination or a "use it or lose it" practice. Given this, Plaintiffs estimated Defendants' exposure here to be nominal or insignificant. Next, as to the record keeping violations, not wage statement violations, Plaintiffs estimated Defendants' exposure here to be nominal or insignificant given such penalties carry a civil penalty subject to deduction. Further, whether these records were accurate is largely derivative of the underlying claims. Further, any violation for a late inspection of these records, again, would be subject to deduction given inspection was not denied but merely untimely.

The proposed settlement thus provides Class Members with the opportunity to obtain relief in a prompt and efficient matter, rather than through a lengthy litigation process with the potential for appeals and/or potential that these claims would not be certified or would later be decertified. As such, the proposed settlement is reasonable in light of all known facts and circumstances, including the strengths and weakness of the claims and the risks associated with this particular litigation.

3. The Proposed Notice is Appropriate and Adequate

Courts enjoy broad discretion in fashioning an appropriate notice program. *Cartt v. Superior Court*, 50 Cal.App.3d 960, 973-974 (1975). Rule 3.766 of the California Rules of Court

1 outlines the notice requirements for class actions. While there is no statutory or due process
2 requirement that all class members receive actual notice, any “notice given should have reasonable
3 chance of reaching a substantial percentage of the class members.” *Id.* at 974. Notice mailed to the
4 class members at their most recent known address is typically presumed adequate. *Phillips*
5 *Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985).

6 Pursuant to the Settlement Agreement, within 15 calendar days after the Court’s
7 preliminary approval of the proposed settlement, Defendant is to compile and provide the
8 Settlement Administrator a list of Settlement Class Members and PAGA Group Members that
9 Defendant will compile from its records, which shall include, to the extent available in Defendant’s
10 business records: each Settlement Class Member’s and each PAGA Group Member’s full name;
11 number of Pay Periods worked; last known address and phone number; employee ID number; and
12 Social Security number. The Class List shall be formatted as a Microsoft Excel spreadsheet or
13 equivalent format. (Ex. 1 at ¶¶ 54(a) and 6). Within 10 calendar days of receipt thereof, the
14 Settlement Administrator will mail, via regular First-Class U.S. Mail, the Notice of Settlement to
15 all Settlement Class Members and PAGA Group Members. (Ex. 1 at ¶ 54(b)). If a Class Notice is
16 returned as undeliverable, the Settlement Administrator will promptly take all reasonable steps to
17 determine the correct address and re-mail the Notice of Settlement to the Settlement Class
18 Member, such as performing skip-tracing and other reasonable searches. (Ex. 1 at ¶ 54(c)). This
19 belt-and-suspenders approach is the proven, most reliable means of providing notice to class
20 members. Since the Notice of Settlement is likely to reach a substantial percentage of the
21 Settlement Class Members, the Class Notice is presumptively adequate. The Class Notice will be
22 provided in English only which is sufficient for the Settlement Class who require English language
23 proficiency in order to communicate with Defendant’s customers. Simpluris is an experienced,
24 qualified, reputable and routinely used class action settlement administrator.

25 The proposed Class Notice, as outlined in above, contains all of the necessary information
26 to comply with Rule 3.766(d) of the California Rules of Court since it explains the nature of the
27 action, the substance of the settlement, the scope of the released claims and released parties, the
28 formula to calculate the Individual Settlement Share, the respective Settlement Class Member’s

1 estimated Individual Settlement Share, and their rights to exclude themselves from or object to the
2 settlement. (Ex. 1 at Exhibit A). Accordingly, all reasonable efforts will be taken to ensure that
3 Settlement Class Members will be informed of the terms of the settlement and their rights
4 thereunder.

5 **B. Conditional Certification of the Class is Appropriate for Settlement Purposes**

6 Pursuant to California Rules of Court, Rule 3.769(d), the Court is permitted at the
7 preliminary approval stage to make an order approving certification of a provisional settlement
8 class. The standard of scrutiny applied by a court to determine the propriety of certifying a
9 settlement class is a lesser standard than that applied to a litigation class since the case management
10 concerns inherent in determining if a litigation class should be certified need not be addressed with
11 respect to a settlement class where trial is not anticipated. *Dunk*, 48 Cal.App.4th at 1807 n. 19; *see*
12 *also Officers for Justice*, 688 F.2d at 633 (“[C]ertification issues raised by class action litigation
13 that is resolved short of a decision on the merits must be viewed in a different light.”); *Amchem*
14 *Products, Inc. v. Windsor*, 521 U.S. 591, 620 (1987) (“Confronted with a request for settlement-
15 only class certification, a district court need not inquire whether the case, if tried, would present
16 intractable management problems...for the proposal is that there be no trial.”). Additionally, the
17 court’s fairness review adequately protects the absent class members. For the reasons discussed
18 below, and for settlement purposes only, Plaintiffs request that this Court provisionally certify the
19 Settlement Class pursuant to California Code of Civil Procedure § 382.⁴

20 **1. The Proposed Classes are Ascertainable and Numerous**

21 The Settlement Class is tailored to ensure the members are readily ascertainable. .” Both
22 sub-class definitions are sufficiently specific to enable potential class members, and the Court, to
23 readily determine the parameters of the class and sub-classes. *See, Clothesrigger, Inc. V. GTE*
24 *Corp.*, 191 Cal.App.3d 605, 617 (1987). Further, the Settlement Class is identifiable from
25 Defendant’s payroll and personnel records. *Rose v. City of Hayward*, Cal.App.3d 926, 932 (1981)
26 (finding “[c]lass members are ‘ascertainable’ where they may be readily identified without
27 unreasonable expense or time by reference to official records.”); *see* (Ex. 1 at ¶¶ 45 and 46):

28 ⁴ The Parties have stipulated to certification of the Settlement Class for settlement purposes only. (Ex. 1 at ¶ 48).

1 The “Retail Banking Settlement Class” which is defined as all individuals
2 who were employed by and performed work for U.S. Bank in any non-
3 exempt retail banking position in California at any time during the period
4 from April 15, 2012 until April 24, 2021.

5 And,

6 The “Non-Retail Banking Settlement Class” which is defined as all
7 individuals who were employed by and performed work for U.S. Bank in
8 any non-retail banking non-exempt hourly position in California who at any
9 time during the period from July 2, 2017 until April 24, 2021 (a) received
overtime in the same workweek as “AwardPrize”, “Best in Us”,
“InvestInsur”, or “BuLineCls” pay, and/or (b) received sick pay in the same
workweek as “AwardPrize”, “Best in Us”, “InvestInsur”, or “BuLineCls”
pay and whose employment ended at any time between July 2, 2017 and
April 24, 2021.

10 The Settlement Class represents approximately 13,431 individuals. (Ex. 1 at ¶ 61). The Retail
11 Banking Settlement Class represents approximately 11,864 individuals. The Non-Retail Banking
12 Settlement Class represents approximately 1,567 individuals. Numerosity is met as the individual
13 joinder of all class members would be impracticable. Code Civ. Proc. §382; *Richmond v. Dart*
14 *Indus., Inc.*, 29 Cal.3d 462, 470 (1981); *Rose*, 126 Cal.App.3d at 934 (presumption of
15 impracticable joinder for class of 30 to 40 individuals).

16 **2. Common Issues of Law or Fact Predominate**

17 Whether a class action is the appropriate mechanism depends largely upon “whether the
18 common questions are sufficiently pervasive to permit adjudication in a class action rather than
19 multiplicity of suits.” *Richmond*, 29 Cal.3d at 477-478. The primary purpose of this inquiry is to
20 ascertain whether the proposed class is sufficiently cohesive to warrant adjudication by
21 representation. *See e.g., Lazar v. Hertz Corp.*, 143 Cal.App.3d 128, 138-139 (1983); *Hogya v.*
22 *Superior Court*, 75 Cal.App.3d 122, 142 (1977).

23 Plaintiffs alleged numerous Labor Code violations including, among other violations, that
24 Defendant failed to provide legally compliant duty free rest periods, timely pay all wages due,
25 including minimum wages and overtime wages at the correct regular rate of pay, failed to pay all
26 penalties and premiums due, failed to provide legally compliant meal periods, failed to pay sick
27 leave at the regular rate of pay, failed to maintain required records, failed to furnish accurate
28 itemized wage statements, and failed to pay all wages due to discharged and quitting employees.

(Ex. 1 at Exhibit B Proposed FAC); (Decl. Hatcher at Exs. 2 and 3). Accordingly, common questions of law and fact exist among the Settlement Class because these Actions focus on the Defendant's allegedly systematic course of illegal employment and payroll practices and policies, which were applied to all Class Members. *See Id.* Moreover, the common questions among the Settlement Class predominate over individual issues thus warranting adjudication of the underlying claims by representation

3. Plaintiffs' Claims Are Typical of the Class Members' Claims

Typicality simply means that the representative(s) claims be similar to those of class members. The interests of the class representatives need not be identical to those of other class members; the class representatives must simply be similarly situated. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1347 (1987); *Classen v. Weller*, 145 Cal.App.3d 27, 46 (1983). Here, the Class Representatives are former California-based retail banking and non-retail banking employees of Defendant. All Plaintiffs worked pursuant to Defendant's corporate policies and pay practices, or alleged lack thereof, applicable to Defendant's California-based retail banking and non-retail banking employees. Plaintiffs Rodriguez and Malik fall under the Retail Banking Sub-class whereas Plaintiff Yousefi falls under the Non-Retail Banking Sub-class. Like the other Class Members, Plaintiffs allege they were paid pursuant to Defendant's policy and pay practices including working under the Defendant's practice of not paying all overtime wages for all hours worked and sick leave pay at the correct regular rate of pay, not paying the correct regular rate of pay for overtime when the Auto Pay system was in play, working pursuant to the required on-premise rest period practice/expectation, working captive shifts, were subject to Defendant's unlawful meal period premium pay remedy waiver and late meal period waiver practices, to whom Defendant failed to provide accurate wage statements, and failing to provide all earned wages at the time of termination. Since each Class Member would be required to demonstrate the same elements in order to recover on their claims against Defendant, their interests are sufficiently aligned with Plaintiffs' interests. *Medraza v. Honda of North Hollywood*, 166 Cal.App.4th 89, 99 (2008).

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1 **4. The Settlement Class is Adequately Represented**

2 A class representative is an adequate representative of the class so long as his or her
3 interests are not antagonistic or in conflict with the objectives that he purports to represent.
4 *Richmond*, 29 Cal.3d at 470. Additionally, Class Counsel “must be qualified, experienced and
5 generally able to conduct the proposed litigation.” *Miller v. Woods*, 148 Cal.App.3d 862, 875
6 (1983).

7 Here, Plaintiffs’ interests are not antagonistic to the interest of the Settlement Class since,
8 as discussed herein, Plaintiffs allege that the Class Members were subject to the same unlawful
9 policies and practices. Consequently, Plaintiffs seek the same or similar relief sought by the
10 Settlement Class. *Amchem*, 521 U.S. at 625-626. Moreover, Plaintiffs have prosecuted this case
11 on behalf of the Settlement Class and have spent considerable time meeting and corresponding
12 with Class Counsel and providing documentation to Class Counsel. (Decl. Hatcher ¶ 14); (Decl.
13 Rosenthal ¶ 15); (Decl. Rodriguez ¶¶ 14, 15, 6-11); (Decl. Malik ¶¶ 10-11); (Decl. Yousefi ¶¶ 7-
14 8). As such, there is no doubt that Plaintiffs are adequate representatives.

15 Additionally, as discussed herein, Class Counsel is very experienced litigating wage and
16 hour class actions. (Hatcher Decl. ¶¶ 4, 16, 17, 18); (Rosenthal Decl. ¶ 17). In this litigation, Class
17 Counsel thoroughly investigated Plaintiffs’ claims, the underlying case law and potential defenses,
18 and reviewed the substantial information and documents exchanged in informal discovery prior to
19 attending mediation. (Decl. Hatcher ¶¶ 7-8, 6); (Decl. Rosenthal ¶ 17). Accordingly, Class Counsel
20 were sufficiently informed prior to engaging in settlement negotiations. Furthermore, the
21 settlement negotiations between the Parties were non-collusive, at arm’s length and conducted
22 with the assistance of a mediator. (Decl. Hatcher ¶ 6); (Decl. Rosenthal ¶ 17). As such, Class
23 Counsel has and will adequately represent the Settlement Class.

24 **5. The Class Action Procedure is Superior**

25 Courts have repeatedly held that class actions are a superior device to resolve wage and hour class
26 actions. *Moore v. Ulta Salon, Cosmetics & Fragrance, Inc.* (C.D. Cal. 2015) 311 F.R.D. 590;
27 *Ortega v. J.B. Hunt Transp., Inc.* (C.D. Cal.2009) 258 F.R.D. 361. Class treatment is clearly
28 superior to any other method of resolving wage and hour employment actions, and in fact

1 encouraged. *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 340; *Jaimez v.*
2 *Daiohs USA, Inc.* (2010) 181 Cal.App.4th 1286, 1308. This is no different here as Plaintiffs' claims
3 are based on common policies (or alleged lack thereof) and uniform class-wide practices, these
4 claims can be most efficiently litigated and resolved on a class-wide basis. The alternative would
5 be the unrealistic filing of thousands of individual claims, posing the serious disadvantages pointed
6 out by the court in the *Sav-On* opinion.

7 **C. The Court Should Approve the PAGA Settlement**

8 Pursuant to Labor Code § 2699(1)(2), a settlement of a civil action brought under the PAGA
9 statute must be submitted to the LWDA and must be approved by the court, "ensuring that any
10 negotiated resolution is fair to those affected." *Williams v. Superior Court*, 3 Cal. 5th 531, 549
11 (2017). This settlement meets that threshold. Contemporaneously to the filing of this Motion, Class
12 Counsel shall submit the proposed settlement to the LWDA. (Decl. Hatcher at ¶ 19). The proposed
13 settlement allocates \$300,000 for civil penalties pursuant to PAGA, with seventy-five percent
14 (75%) of the allocation to be paid to the LWDA. (Ex. 1 at ¶ 50). The proposed allocation of
15 \$300,000 to PAGA is an exceptional outcome in light of all known facts and circumstances as well
16 as the fact that civil penalties under PAGA are discretionary.

17 "Relief under PAGA is designed primarily to benefit the general public, not the party
18 bringing the action." *Kim v. Reins Int'l Cal., Inc.*, 9 Cal. 5th 73, 81 (2020). As a result, "in wage
19 and hour class action cases that settle, which are the overwhelming majority of such cases, very
20 little of the total settlement is paid to PAGA penalties in order to maximize payments to class
21 members." *Magadia v. Wal-Mart Assocs.*, 384 F. Supp. 3d 1058, 1101 (N.D. Cal. 2019) (*reversed*
22 *on other grounds by* 999 F.3d 668 (9th Cir. 2021)); *see also Smith v. Am. Greetings Corp.*, 2016
23 U.S. Dist. LEXIS 66247 (N.D. Cal. May 19, 2016) (granting final approval of class action
24 settlement allocating \$37,500 of \$4 million settlement to PAGA); *Willner v. Manpower Inc.*, 2015
25 U.S. Dist. LEXIS 80697 (N.D. Cal. June 20, 2015) (granting final approval of a class settlement
26 allocating \$65,655 of \$8.75 million settlement to PAGA); *Chu v. Wells Fargo Investments, LLC*,
27 2011 U.S. Dist. LEXIS 15821 (N.D. Cal. Feb. 15, 2011) (approving \$10,000 PAGA allocation in
28 \$6.9 million settlement). In fact, courts have held that no part of the settlement must necessarily

1 be allocated and distributed to the LWDA. *See, e.g., Nordstrom Commissions Cases*, 186
2 Cal.App.4th 576, 589 (2010) (affirming a settlement allocating \$0 of \$6.4 million settlement to
3 PAGA). The \$75,000 payment to the LWDA is thus more than adequate “to supplement” funding
4 the agency’s “enforcement of labor laws” and “education of employers and employees about their
5 rights and responsibilities under” the Labor Code. Cal. Lab. Code § 2699(i).

6 Furthermore, if a higher amount is allocated to PAGA, the burden to pay civil penalties
7 would effectively shift to the Class Members since a higher allocation would reduce the amount
8 that the Class Members would ultimately receive under the proposed settlement. Although this
9 burden shifting may achieve the enforcement objective of the statute, it would do so at the expense
10 of the employees that the statute was designed to protect. Accordingly, the proposed allocation of
11 \$300,000 to PAGA, \$225,000 of which is being paid to the LWDA, strikes a balance between the
12 interest of all the parties, including the LWDA and general public, by penalizing the employer and
13 providing relief to the Settlement Class Members. As such, the proposed settlement is fair,
14 adequate, and reasonable. Plaintiffs thus respectfully request that the Court approve the proposed
15 LWDA payment.

16 Finally, the PAGA Settlement is procedurally correct. The Class Notice effectively informs
17 the Settlement Class that even if the Settlement Class Member opts-out of the Class settlement
18 he/she will not be opted-out of the PAGA settlement and still bound by the PAGA Release.
19 Moreover, pursuant to Labor Code §2699(1)(2) a copy of the settlement shall be submitted to the
20 LWDA concurrently to the filing of this Motion for Preliminary Approval. Plaintiffs will file a
21 copy of the submission receipt with the Court on or before the date or deadline that reply to this
22 motion is to be filed. (Decl. Hatcher, ¶ 19).

23 **D. Requested Representative Service Awards are Fair and Reasonable**

24 Courts routinely approve service awards in order to compensate class representatives for
25 their effort and the risks they incur during class action litigation for the benefit of other class
26 members. *Cellphone Termination Fee Cases*, 186 Cal.App.4th 1380, 1393-94 (2010); *Clark v.*
27 *American Residential Services, LLC*, 175 Cal.App.4th 785, 806 (2009). Simply put, such payments
28 acknowledge that without class representatives, there can be no class action. *Clark*, 175

1 Cal.App.4th at 804. In determining service payments, the court may consider, among other things,
2 the risk to the class representative in commencing the suit, financial and otherwise; the notoriety
3 and personal difficulties encountered by the class representative; the amount of time and effort
4 spent by the class representative; and the personal benefit (or lack thereof) enjoyed by the class
5 representative as a result of the litigation. *Munoz*, 186 Cal.App.4th at 412.

6 By being the named representatives in the Actions, Plaintiffs put their name forward on the
7 public record at the risk of future or potential employers choosing not to hire them based on the
8 fact that they took the lead in these Actions. Plaintiffs also ran the risk of being liable for
9 Defendant’s attorneys’ fees and costs due to potential two-way fee shifting provisions in the Labor
10 Code. *See* Labor Code §§ 218.5, 226. Plaintiffs also spent significant time litigating these actions,
11 reviewing documents, providing documents and information to Class Counsel, sitting for
12 depositions, responding to written discovery and supplementing written discovery responses,
13 discussing their experience with Class Counsel, reviewing settlement documents, and providing
14 consistent support to Class Counsel. (Decl. Hatcher ¶14); (Decl. Rosenthal ¶16). Moreover,
15 Plaintiffs have executed a full and general release of any and all claims to the furthest extent
16 permitted by law in exchange for the service payments. (Ex. 1 at ¶ 75). Accordingly, Plaintiffs
17 have risked and surrendered more than any Class Member. Therefore, a \$20,000 Service Award
18 to Plaintiffs Rodriguez and Malik and a \$10,000 Service Award to Plaintiff Yousefi is reasonable
19 given the work and the risks that they took and bore for the benefit of other members of the
20 Settlement Class.

21 **E. Requested Attorney Fees and Costs are Fair and Reasonable**

22 Class Counsel will seek attorneys’ fees of one-third of the Gross Settlement Amount as
23 attorneys’ fees. The California Supreme Court has endorsed attorneys’ fees awards in class action
24 litigation which represent a percentage of the fund created in contingency fee litigation such as
25 this matter. *Laffitte v. Robert Half Internat. Inc.*, 1 Cal. 5th 480, 503 (2016) (affirming trial court
26 decision awarding class counsel with attorneys’ fees of one-third of the common fund). “The
27 recognized advantages of the percentage method—including relative ease of calculation,
28 alignment of incentives between counsel and the class, a better approximation of market conditions

1 in a contingency case, and the encouragement it provides counsel to seek an early settlement and
2 avoid unnecessarily prolonging the litigation [] convince us the percentage method is a valuable
3 tool that should not be denied our trial courts.” *Id.* (internal citations omitted). “[T]he percentage
4 of the fund method more accurately reflects the results achieved.” *Id.* at 504 (quotation and citation
5 omitted).

6 A one-third fee is within a historical range of 20 to 50 percent of a common fund and is also within
7 the range provided in contingent-fee agreements signed by the named plaintiffs. *Laffitte, supra*, 1
8 Cal.5th at 487-488. Class counsel in that case also requested a multiplier between 2.03 to 2.13. *Id.*
9 Numerous state and federal courts in California routinely approve fee requests equal to or greater
10 than 33% of the common fund. Some courts have found that an award of 33% of the common fund
11 represents the “benchmark” in California. *Smith v. CRST Van Expedited, Inc.*, 2013 U.S. Dist.
12 LEXIS 6049, at *14 (S.D. Cal. Jan. 14, 2013) (“These percentages compare favorably with both
13 California (33%) and federal (25%) benchmarks.”); *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th
14 43, 66, fn. 11 (“Empirical studies show that, regardless whether the percentage method or the
15 lodestar method is used - fee awards in class actions average around one-third of the recovery.”);
16 *Dennis v. Kellogg Co.*, 2013 U.S. Dist. LEXIS 163118, at *23 (S.D. Cal. 2013) (“This percentage
17 compares favorably with both California (33%) and federal (25%) benchmarks and the requested
18 fee compares well with a lodestar cross-check as well.”); *Singer v. Becton Dickinson & Co.* 2010
19 U.S. Dist. LEXIS 53416, at *7 (S.D. Cal. 2010); *Ingalls v. Hallmark Retail, Inc.*, 2009 U.S. Dist.
20 LEXIS 131078 (C.D. Cal. Oct. 16, 2009). Class Counsel’s request for attorneys’ fees of one-third
21 of the common fund are fair and reasonable and in line with other employment cases where Class
22 Counsel worked on a contingency fee basis and created a substantial, non-reversionary settlement
23 fund for class members.⁵

24 There is a fee splitting agreement in this case between The Myers Law Group, APC
25 (“MLG”); Diversity Law Group, P.C. (“DLG”); Polaris Law Group, LLP (“PLG”); and Davtayan
26 Law Firm (“DLF”) with the percentage of the fee award as follows: MLG at 58.5%, DLG at 20.5%,
27

28 ⁵ As part of the final approval process, Class Counsel’s motion for attorney’s fees will include a lodestar cross-check.

PLG at 11%, and DLF at 10%. (Decl. Hatcher at ¶15). The named Plaintiffs have given written approval of this fee splitting agreement. (Decl. Hatcher at ¶15).

Class Counsel will also seek reimbursement of their costs up to a maximum of \$70,000.00 from the Gross Settlement Amount. These actions have been pending since as early as April 2016, covered three separate private mediations that included travel to Northern California, multiple depositions that included travel to Northern California, a significant *Belair-West* Notice process for approximately 6,000 putative class members, etc. The out-of-pocket costs allocation for the litigation of the Actions is fair, reasonable and adequate. Class Counsel will provide the final exact cost reimbursement as part of the final approval process that will be supported by documentation of costs incurred. Moreover, the difference of the maximum amount of cost reimbursement and the actual amount sought/awarded will be added to the NCSA to be distributed to the Settlement Class Members. (Ex. 1 at ¶ 3).

VI. PROPOSED SCHEDULE OF SETTLEMENT PROCEEDINGS

The Parties propose the following schedule for the fairness hearing and final proceedings:

1. First Mailing of Notice, etc. to the Class:	25 days after entry of an order granting preliminary approval)
2. Deadline to postmark Requests for Exclusion/Objections:	45 days from the initial mailing of the Notice of Settlement.
3. Filing Date for Final Approval of Settlement and Final Approval Papers re: Attorneys' Fee, Enhancement Fees, and Reimbursements of Costs:	No later than 16 court days prior to the Final Approval/Fairness Hearing.
4. Final Approval/Fairness Hearing:	To be set by the Court

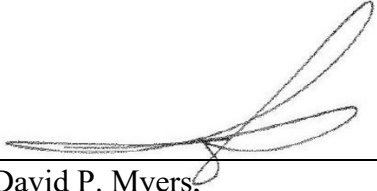
VII. CONCLUSION

Accordingly, Plaintiff respectfully requests that this Court Grant preliminary approval of the Settlement, conditionally certify the Settlement Class for purposes of settlement only, appoint David P. Myers, Robert M. Kitson, and Jason Hatcher of The Myers Law Group, A.P.C.; Larry

1 W. Lee, Kristen M. Agnew, and Nicholas Rosenthal of Diversity Law Group, P.C.; and William
2 L. Marder of Polaris Law Group LLP, as class counsel, appoint Plaintiffs Charles Rodriguez, Ali
3 Malik, and Atefeh Yousefi as class representatives, order notice of conditional certification and
4 preliminary approval of the class action settlement to the class, and grant leave to file and deem
5 filed the Fourth Amended Complaint and schedule a final approval/fairness hearing.

6
7 DATED: November 29, 2021

THE MYERS LAW GROUP, A.P.C.

8
9
10 By: 
11 David P. Myers,
12 Robert M. Kitson,
13 Jason Hatcher
14 Attorneys for Plaintiff, on behalf of himself and
15 all others similarly situated
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