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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **IN AND FOR THE COUNTY OF SAN LUIS OBISPO**

15 ANNA LEVINE, an individual, on
16 behalf of herself and on behalf of all
17 persons similarly situated,

18 Plaintiff,

19 vs.

20 ASSOCIATED STUDENTS
21 INCORPORATED OF CALIFORNIA
22 POLYTECHNIC STATE
23 UNIVERSITY AT SAN LUIS OBISPO,
24 a California Corporation;
25 ASSOCIATED STUDENTS, INC., a
26 California Corporation; and DOES 1
27 through 50, inclusive,

28 Defendants.

Case No.: **20CV-0664**
(Consolidated with Case No. 20CV-0672)

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

Hearing Date: February 2, 2023
Hearing Time: 9:00 a.m.

Dept.: 2
Judge: Hon. Rita Federman

Action Filed: December 21, 2020
Trial Date: Not Set

1 **I. INTRODUCTION**

2 Plaintiff Anna Levine (“Plaintiff”) respectfully submits this memorandum in support of the
3 unopposed motion for preliminary approval of the proposed class action settlement with Defendant
4 Associated Students Incorporated of California Polytechnic State University at San Luis Obispo
5 (“Defendant”), and seeks entry of an order: (1) preliminarily approving the proposed Settlement of this
6 class action with Defendant; (2) for settlement purposes only, conditionally certifying the Class,
7 which is comprised of the “California Class” defined as “all individuals who are or were
8 employed by Defendant in California and who are or were classified as non-exempt employees
9 during the California Class Period” and the “FCRA Class defined as “all employees and
10 prospective employees of Defendant in the United States on whom Defendant conducted a
11 background check during the "FCRA Class Period.”; (3) provisionally appointing Plaintiff as
12 the representative of the Class; (4) provisionally appointing Norman B. Blumenthal, Kyle R.
13 Nordrehaug, Aparajit Bhowmik, Jeffrey S. Herman, Piya Mukherjee, and Charlotte James of
14 Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel for the Class; (5) approving
15 the form and method for providing class-wide notice; (6) directing that notice of the proposed
16 settlement be given to the Class; (7) appointing CPT Group as Settlement Administrator, and
17 (8) scheduling the final approval hearing date to consider Plaintiff’s motion for final approval
18 of the settlement and entry of the Judgment, and Plaintiff’s motion for approval of attorneys’
19 fees and expenses. Plaintiff and Defendant (collectively the “Parties”) have reached a full and final
20 settlement of the above-captioned action, which is embodied in the Class and Representative Action
21 Settlement Agreement (“Agreement”) filed concurrently.¹ A copy of the fully executed Agreement is
22 attached as Exhibit #1 to the Declaration of Kyle Nordrehaug (“Decl. Nordrehaug”), served and filed
23 herewith.

24 As consideration for this Settlement, the Gross Settlement Amount is One Million Three
25 Hundred Fifty Thousand Dollars (\$1,350,000.00) to be paid by Defendant, as set forth in the
26 Agreement. The Gross Settlement Amount is all-inclusive of all payments contemplated in this
27

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

1 resolution, excluding any employer-side payroll taxes on the portion of the Settlement Shares allocated
2 to wages which shall be separately paid by Defendant to the Settlement Administrator. The Settlement
3 is all-in with no reversion to Defendant and no need to submit a claim form. Decl. Nordrehaug at ¶3.

4 On February 16, 2022, the Parties participated in an all -day mediation presided over by Tripper
5 Ortman, a respected and experienced mediator of wage and hour representative and class actions.
6 Following the mediation, the Parties were able to agree to settle the Action based upon a mediator's
7 proposal, which was memorialized in a Memorandum of Understanding. Decl. Nordrehaug at ¶5. The
8 Settlement is fair, reasonable and adequate, and should be preliminarily approved because there is a
9 substantial monetary payment, and there are substantial litigation and class-certification risks.
10 Therefore, Plaintiff respectfully requests that this Court grant preliminary approval of the Agreement
11 and enter the proposed order submitted herewith.

12 **II. DESCRIPTION OF THE SETTLEMENT**

13 The Gross Settlement Amount is One Million Three Hundred Fifty Thousand Dollars
14 (\$1,350,000) (Agreement at ¶22.) Under the Settlement, the Gross Settlement Amount consists of the
15 following elements: (1) Settlement Shares to the Participating Class Members, (2) Settlement
16 Administration Expenses, (3) Class Counsel Fees Payment, (4) Class Counsel Litigation Expenses
17 Payment, (5) Class Representative Service Payment, and (5) the PAGA Payment to Aggrieved
18 Employees and the LWDA, and excluding any employer payroll taxes, if any, due on the portion of the
19 Settlement Shares allocated to wages which shall not be paid from the Gross Settlement and shall be
20 the separate additional obligation of Defendant. (Agreement at ¶¶ 22 and 44-45.) The Gross
21 Settlement Amount does not include Defendant's share of payroll taxes. (Agreement at ¶22.) The
22 Gross Settlement Amount shall be all-in with no reversion to Defendant. (Agreement at ¶22.) Decl.
23 Nordrehaug at ¶15.

24 Defendant shall fund the Gross Settlement Amount and the amount necessary to pay
25 Defendant's share of payroll taxes within fifteen (15) days of the Effective Date. (Agreement at
26 ¶47(g).) Within thirty (30) days of the Effective Date, the Settlement Administrator will make payment
27 of all Settlement Shares to Participating Class Members along with the other Court-approved
28 distributions under the Agreement. (Agreement at ¶47(g).) Decl. Nordrehaug at ¶16.

1 The Net Settlement Amount shall equal the Gross Settlement Amount less the Court approved
2 amounts for the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, the
3 Class Representative Service Payment, the PAGA Payment to the LWDA, and Settlement
4 Administration Expenses. (Agreement at ¶24.) The Net Settlement Amount will be distributed as the
5 Settlement Shares to the Class Members and Aggrieved Employees. (Agreement at ¶45.) For the
6 Aggrieved Employees, the Settlement Administrator shall then divide the amount of Six Thousand Two
7 Hundred and Fifty Dollars (\$6,250.00) by the Total Pay Periods, resulting in a value for each pay period
8 ("Pay Period Value"); the Settlement Administrator shall then take the number of pay periods for each
9 an Aggrieved Employee and multiple it by the Pay Period Value to derive the appropriate payment for
10 each Aggrieved Employee. (Agreement at ¶45(a).) Each Participating Class Member who is a FCRA
11 Class Member shall receive a flat payment of One Hundred Dollars (\$100.00). (Agreement at ¶45(b).)
12 The amount remaining from Net Settlement Amount after subtracting the FCRA Class Amount and the
13 portion of the PAGA Payment that is payable to Aggrieved Employees shall be considered the
14 "California Settlement Amount." Each Participating Class Member who is a California Class Member
15 shall be entitled to a portion of the California Settlement Amount as follows: the Settlement
16 Administrator shall divide the California Settlement Amount by the total number of Compensable
17 Workweeks for all Participating Class Members who are California Class Members, resulting in a value
18 for each Compensable Workweek ("Workweek Value"), and the Settlement Administrator shall then
19 take the number of Compensable Workweeks for each Participating Class Member who is a California
20 Class Member and multiple it by the Workweek Value to derive the appropriate payment for each
21 California Class Member. (Agreement at ¶45(c).) Compensable Workweeks will initially be based on
22 Defendant's records, however Class Members will have the right to challenge their workweeks. Decl.
23 Nordrehaug at ¶17.

24 Class Members may choose to opt-out of the Settlement by following the directions in the Class
25 Notice. (Agreement at ¶47(c), Ex. A.) All Class Members who do not "opt out" will be deemed
26 Participating Class Members who will be bound by the Settlement and will be entitled to receive a
27 Settlement Share. An Aggrieved Employee who opts out the Settlement will still be paid their
28 allocation of the PAGA Payment and will remain subject to the release of the PAGA Released Claims,

1 regardless of their request for exclusion. (Agreement at ¶47(c)(iii).) Finally, the Class Notice will also
2 advise the Class Members of their right to object to the Settlement and/or dispute their Compensable
3 Workweeks. (Agreement at ¶47(c), Ex. A.) Decl. Nordrehaug at ¶18.

4 A Participating Class Member must cash his or her Settlement Share check within 180 days
5 after it is mailed. (Agreement at ¶47(h).) The Settlement Administrator will send a reminder to
6 Participating Class Members who have not cashed their checks within 120 days after its last mailing
7 to the affected individual. (Agreement at ¶47(h).) Any settlement checks not cashed within 180 days
8 will be voided and any the funds from such uncashed checks will be paid to the California State
9 Controller's Unclaimed Property Fund in the name of and for the benefit of the individual who did not
10 cash their check. (Agreement at ¶47(h).) Decl. Nordrehaug at ¶19.

11 The Parties have agreed to use CPT Group as the Settlement Administrator. (Agreement at
12 ¶30.) From the Gross Settlement Amount, the Settlement Administrator shall be paid for the expenses
13 of administering the Settlement in an amount not to exceed \$35,000. (Agreement at ¶44(d).) Decl.
14 Nordrehaug at ¶20.

15 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
16 to exceed thirty-three percent (33%) of the Gross Settlement Amount, as the Class Counsel Fees
17 Payment. (Agreement at ¶44(b).) Class Counsel will also be allowed to apply separately for an award
18 of Class Counsel Litigation Expenses Payment in an amount not to exceed \$20,000. (Agreement at
19 ¶44(b).) Subject to Court approval, the Agreement provides for a payment of no more than \$10,000
20 to the Plaintiff as the Class Representative Service Payment. (Agreement at ¶44(a).) Decl. Nordrehaug
21 at ¶21.

22 The Parties will seek approval from the Court for the PAGA Payment of \$25,000 out of the
23 Gross Settlement Amount, which shall be allocated 75% (\$18,750) to the LWDA as the LWDA's share
24 of the PAGA Payment pursuant to PAGA and 25% (\$6,250) will be distributed to the Aggrieved
25 Employees based on their respective Total Pay Periods worked during the PAGA Period. (Agreement
26 at ¶44(c).) All Aggrieved Employees will be sent their share of the PAGA Payment and will be subject
27 to the release of the PAGA Released Claims, whether or not they opt out of the Settlement. As set forth
28 in the accompany proof of service, the LWDA has been served with this motion and the Agreement.

Decl. Nordrehaug at ¶22.

III. CASE BACKGROUND

The description of the case and claims, along with the procedural history is set forth in the Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and the exchange of documents and information in connection with the Action which permitted Class Counsel to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and 14. The Parties participated in mediation with Tripper Ortman on February 16, 2022, which after arm's length negotiations, resulted in this Settlement. Decl. Nordrehaug, ¶12.

IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO GRANT PRELIMINARY APPROVAL

When a proposed class-wide settlement is reached, the settlement must be submitted to the court for approval. 2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) at §11.41, p.11-87. California "[p]ublic policy generally favors the compromise of complex class action litigation." *Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 581 (2010) quoting *Cellphone Termination Fee Cases*, 180 Cal.App.4th 1110, 1117-18 (2009). Class action settlements are approved where the proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982), cert. denied, 459 U.S. 1217 (1983)).

Preliminary approval is the first of three steps that comprise the approval procedure for settlements of class actions. The second step is the dissemination of notice of the settlement to all class members. The third step is a final settlement approval hearing, at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement may be presented, and class members may be heard regarding the settlement. *See Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996); *Manual for Complex Litigation, Second* §30.44 (1993); Cal. Rules of Court, rule 3.769.

The primary question presented on an application for preliminary approval of a proposed class action settlement is whether the proposed settlement is "within the range of possible approval." *Manual for Complex Litigation, Second* §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th

1 Cir. 1982).² Preliminary approval is merely the prerequisite to giving notice so that “the proposed
2 settlement... may be submitted to members of the prospective Class for their acceptance or rejection.”
3 *Sayaman v. Baxter Healthcare Corp.*, 2010 U.S. Dist. LEXIS 151997, *3 (C.D. Cal. 2010). There is
4 “a presumption of fairness . . . where . . . [a] settlement is reached through arms-length bargaining.”
5 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 245 (2001) (citation omitted); see also *Cho v.*
6 *Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th 734, 742-45 (2009) (upholding trial court’s
7 determination that settlement was “fair, reasonable and adequate” where the settlement “provided
8 valuable benefits to the class . . . that were ‘particularly valuable in light of the risks plaintiff would have
9 faced if she proceeded to litigate her case.’”); *Newberg*, 3d Ed., §11.41, p.11-88. However, the ultimate
10 question of whether the proposed settlement is fair, reasonable and adequate is made after notice of the
11 settlement is given to the class members and a final settlement hearing is held by the Court.

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

13 The approval of a proposed settlement of a class action suit is a matter within the broad
14 discretion of the trial court. *Wershba, supra*, 91 Cal.App.4th at 234-235; *Dunk*, 48 Cal.App.4th 1794.
15 Preliminary approval does not require the trial court to answer the ultimate question of whether a
16 proposed settlement is fair, reasonable and adequate. That final determination is made only after notice
17 of the settlement has been given to the class members and after they have been given an opportunity
18 to voice their views of the settlement or to be excluded from the settlement. 3B J. Moore, *Moore’s*
19 *Federal Practice* §§23.80 - 23.85 (2003).

20 In considering a potential settlement for preliminary approval purposes, the trial court does not
21 have to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the
22 dispute, and need not engage in a trial on the merits. *Wershba, supra*, 91 Cal.App.4th at 239-40; *Dunk*,
23 *supra*, 48 Cal.App. 4th at 1807. The Ninth Circuit explains, “the very essence of a settlement is
24 compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” *Officers for Justice*, 688

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26 ² California courts look to federal authority on class actions. *Vasquez v. Superior Court*, 4 Cal.3d
27 800, 821 (1971). “It is well established that in the absence of relevant state precedents trial courts are
28 urged to follow the procedures prescribed in Rule 23 of the Federal Rules of Civil Procedure for
conducting class actions.” *Frazier v. City of Richmond*, 184 Cal. App.3d 1491, 1499 (1986), citing
Green v. Obledo, 29 Cal.3d 126, 145-146 (1981).

1 F.2d at 624. The question whether a proposed settlement is fair, reasonable and adequate necessarily
2 requires a judgment and evaluation by the attorneys for the parties based upon a comparison of “the
3 terms of the compromise with the likely rewards of litigation.” *Weinberger v. Kendrick*, 698 F.2d 61,
4 73 (2d Cir. 1982), *cert. denied* 464 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders*
5 *of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)). Thus, when analyzing the
6 settlement, the amount is “not to be judged against a hypothetical or speculative measure of what might
7 have been achieved by the negotiators.” *Officers for Justice*, 688 F.2d at 625, 628.

8 With regard to class action settlements, the opinions of counsel should be given considerable
9 weight both because of counsel’s familiarity with this litigation and previous experience with cases
10 such as these. *Officers for Justice*, 688 F.2d at 625; *In re Wash. Public Power Supply System Sec.*
11 *Litig.*, 720 F. Supp. 1379, 1392 (D. Ariz. 1989); *Kirkorian v. Borelli*, 695 F. Supp. 446, 451 (N.D. Cal.
12 1988); *Weinberger*, 698 F.2d at 74. “The recommendations of plaintiffs’ counsel should be given a
13 presumption of reasonableness.” *Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 622 (N.D. Cal. 1979). As
14 a result, courts hold that the recommendation of counsel is entitled to significant weight. *Nat’l Rural*
15 *Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004).

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

17 A number of factors are to be considered in evaluating a settlement for purposes of preliminary
18 approval. In determining whether to grant preliminary approval, the court considers whether the “(1)
19 the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, (2)
20 has no obvious deficiencies, (3) does not improperly grant preferential treatment to class representatives
21 or segments of the class, and (4) falls within the range of possible approval.” *In re Tableware Antitrust*
22 *Litig.*, 484 F.Supp. 2d 1078, 1079 (N.D. Cal. 2007). No one factor should be determinative, but rather
23 all factors should be considered. The analysis has been summarized as follows:

24 If the proposed settlement appears to be the product of serious, informed, noncollusive
25 negotiations, has no obvious deficiencies, does not improperly grant preferential
26 treatment to class representatives or segments of the class, and falls within the range of
27 possible approval, then the court should direct that notice be given to the class members
28 of a formal fairness hearing, at which evidence may be presented in support of and in
opposition to the settlement.

Manual of Complex Litigation, Second § 30.44, at 229.

1 Here, the Settlement meets all of these criteria for preliminary approval.

2 **1. The Settlement is the Product of Serious, Informed and**
3 **Arm's Length Negotiations by Experienced Counsel**

4 This Settlement is the result of extensive and hard-fought litigation as well as negotiations
5 before an experienced and well-respected mediator. Defendant has expressly denied and continues to
6 deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff and
7 Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released
8 Class Claims in accordance with this Settlement.³

9 Class Counsel are experienced and qualified to evaluate the class claims, the defenses asserted,
10 and the risks and benefits of trial and settlement, and Class Counsel are particularly experienced in
11 wage and hour employment class actions, as Class Counsel has previously litigated and certified similar
12 claims against other employers. Decl. Nordrehaug at ¶31. The view of qualified and well-informed
13 counsel that a class action settlement is fair, adequate, and reasonable is entitled to significant weight.
14 *See Kullar v. Foot Locker*, 168 Cal. App. 4th 116, 133 (2008) (the trial court "undoubtedly should
15 continue to place reliance on the competence and integrity of counsel, the involvement of a qualified
16 mediator, and the paucity of objectors to the settlement."); *Dunk*, 48 Cal. App. 4th at 1802.

17 The Parties attended an arms-length mediation session with Tripper Ortman, a respected and
18 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation

19
20 ³ The release applicable to the Class is appropriately tethered to solely to the allegations in the
21 Action. The "California Class Released Claims" are "any and all demands, rights, liabilities, claims
22 and/or causes of action that are alleged in the Action or that could have been alleged based on the facts
23 alleged in the Action or in the PAGA Letter, including, all claims under California Labor Code sections
24 201-204, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, all claims
25 for failure to pay minimum wages, failure to pay overtime compensation, failure to provide required
26 meal and rest periods, failure to provide accurate itemized statements, failure to reimburse employees
27 for required business expenses, failure to provide wages when due, and claims under California
28 Business and Professions Code section 17200. (Agreement at ¶48(d).) The "FCRA Class Released
Claims" are "any and all demands, rights, liabilities, claims and/or causes of action under FCRA that
are alleged in the Action or that could have been alleged based on the facts alleged in the Class Action
including, all claims for failure to make proper disclosures and/or obtain proper authorization pursuant
to 15 U.S.C., sections 1681, et seq., all claims for failure to make proper disclosures pursuant to
California Civil Code section 1786, et seq., and all claims for failure to obtain proper disclosures
pursuant to California Civil Code section 1785, et seq." (Agreement at ¶48(b).)

1 for the mediation, Defendant provided Class Counsel with necessary information for the members of
2 the Class, including time data, payroll data and data concerning the composition of the Class. Class
3 Counsel analyzed the data with the assistance of damages expert, Berger Consulting, and prepared and
4 submitted a mediation brief and damage valuation to the Mediator. At the conclusion of the all-day
5 mediation, the Parties agreed to this Settlement. Decl. Nordrehaug at ¶ 5. Importantly, Plaintiff and
6 Class Counsel believe that this Settlement is fair, reasonable and adequate.

7 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant is
8 One Million Three Hundred Fifty Thousand Dollars (\$1,350,000). The Settlement is all-in with no
9 reversion to Defendant and no need to submit a claim form. Decl. Nordrehaug at ¶ 3.

10 Class Counsel has conducted a thorough investigation into the facts of the class action. Over
11 the course of over a year, Class Counsel has diligently evaluated the Class Members' claims against
12 Defendant. Prior to the settlement negotiations, counsel for Defendant provided Class Counsel with
13 access to necessary information for the Class. In addition, Class Counsel previously negotiated
14 settlements with other employers in actions involving nearly identical issues and analogous defenses.
15 Based on the foregoing data and their own independent investigation, evaluation and experience, Class
16 Counsel believes that the settlement with Defendant on the terms set forth in the Agreement is fair,
17 reasonable, and adequate and is in the best interest of the Class in light of all known facts and
18 circumstances, including the risk of significant delay, defenses asserted by Defendant, and potential
19 appellate issues. Decl. Nordrehaug at ¶ 14.

20 Plaintiff and Class Counsel recognize the expense and length of continuing to litigate and trying
21 these Action against Defendant through possible appeals which could take several years. Class Counsel
22 has also taken into account the uncertain outcome and risk of litigation, especially in complex class
23 actions such as these Action. Class Counsel is also mindful of and recognize the inherent problems of
24 proof under, and alleged defenses to, the claims asserted in the Action. Based upon their evaluation,
25 Plaintiff and Class Counsel have determined that the Settlement set forth in the Agreement is in the best
26 interest of the Class Members. Decl. Nordrehaug, ¶ 23.

27 Here, there can be no dispute that the litigation has been hard-fought with aggressive and
28 capable advocacy on both sides. The Parties were represented by experienced and capable counsel who

1 zealously advocated their positions. Accordingly, “[t]here is likewise every reason to conclude that
2 settlement negotiations were vigorously conducted at arms’ length and without any suggestion of undue
3 influence.” *In re Wash. Public Power Supply System Sec. Litig.*, 720 F. Supp. at 1392.

4 **2. The Settlement Has No "Obvious Deficiencies" and Falls Well Within**
5 **the Range for Approval**

6 The proposed Settlement herein has no "obvious deficiencies" and is well within the range of
7 possible approval. All Class Members will receive an opportunity to participate in the Settlement and
8 receive payment according to the same formula. (Agreement at ¶45.) After deductions, the Net
9 Settlement Amount provides an average recovery of \$259 per California Class Member, \$3.68 per work
10 week, and \$100 per FCRA Class Member. Decl. Nordrehaug, ¶6.

11 The calculations to compensate for the amount due to the California Class Members at the time
12 this Settlement was negotiated were calculated by Plaintiff’s expert, Berger Consulting, in advance of
13 mediation. For the California Class Members whose claims are at issue in this Action, Plaintiff
14 analyzed the data for putative class members and determined the potential maximum damages for the
15 class claims. Plaintiff determined that the unpaid wages due to the alleged rounding of work time to
16 be \$35,612, the maximum potential rest period damages were estimated to be \$4,127,619 based upon
17 a 100% violation rate from an alleged on duty policy, the maximum meal period damages at a 14%
18 violation rate were estimated to be \$126,392 after deducting the meal period premiums paid by
19 Defendant, the maximum damages for alleged off the clock work were estimated to be \$2,888,947, and
20 the maximum damages for unreimbursed expenses were estimated to be \$530,004 at a rate of \$10 of
21 unreimbursed cell phone expense incurred each month. In total, the damages for the California Class
22 were calculated to have a maximum total value of \$7,708,574. In addition, Plaintiff calculated that the
23 maximum value of the waiting time penalties were between \$2,521,853 and \$2,709,840 depending on
24 the predicate violation, and the maximum value of the wage statement penalties to be \$3,005,800,
25 however, these wage statement and waiting time penalties claims potentially have a much smaller
26 value, even if damages were awarded, to the extent that they are only derivative of the meal and rest
27
28

break claims.⁴ Decl. Nordrehaug, ¶6.

Consequently, the Gross Settlement Amount represents more than 15% of the value of the potential maximum damages at issue for the California Class in this case after excluding the FRCA Class Amount (discussed below), assuming these amounts could all be proven in full at trial.⁵ The above maximum calculations should then be adjusted in consideration for both the risk of certification and the risk of establishing class-wide liability on all claims.

As to the FCRA Class, FCRA provides for statutory damages of \$100 to \$1,000 per willful violation. 15 U.S.C. § 1681n. This means the maximum value of the FCRA claim for the 50 individuals in the FCRA Class is between \$5,000 and \$50,000. A comparison of approved FCRA settlements involving similar facts further confirms the reasonableness of this Settlement. The Court in *Pietras v. Sentry Ins. Co.*, 513 F. Supp. 2d 983, 985 (N.D. Ill 2007), "cited eighteen cases, which settled for an average of \$34.59 per class member." Similarly, in *Bailes v. Lineage Logistics, LLC*, 2016 U.S. Dist. LEXIS 110943 (D. Kan 2016), the District Court approved a FCRA class settlement which provided for a fund of \$149,205 for a class of 3,430, which correlates to \$43.50 per person. In *Feist v. Petco Animal Supplies, Inc.*, 2018 U.S. Dist. LEXIS 98686 (S.D. Cal. 2018), Judge Marilyn Huff granted preliminary approval to an FCRA class settlement of \$1.2 million for a class of 37,000, which equates to \$32.43 per person.⁶ Here, the Settlement allocates \$100 per FCRA Class Member, which is certainly

⁴ While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and 226, at mediation Plaintiff recognized that these claims were subject to various defenses asserted by Defendant, including, but not limited to, a good faith dispute defense as to whether any premium wages for meal or rest periods or other wages were owed given Defendant's position that Plaintiff were properly compensated. See *Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584 (2010) ("There is no willful failure to pay wages if the employer and employee have a good faith dispute as to whether and when the wages were due."). Additionally, Courts had held that violations of the meal and rest period regulations did not give rise to claims under sections 203 and 226. See e.g. *Ling v. P.F. Chang's China Bisto, Inc.*, 245 Cal. App. 4th 1242, 1261 (2016) and *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308, 1336 (2018). As a result, at the time of mediation, the viability of Plaintiff's claims on these theories was uncertain.

⁵ Because the PAGA claim does not provide a recovery to the Class, Plaintiff has not included the PAGA claim in this discussion. The PAGA claim is addressed in the Decl. Nordrehaug at ¶ 33.

⁶ See also *Moore v. Aerotek, Inc.*, 2017 WL 2838148, at *4 (S.D. Ohio 2017) (per-capita gross recovery of \$25 in FCRA case); *Aceves v. Autozone Inc.*, No. 5:14-cv-2032, ECF No. 58 (C.D. Cal.

1 fair and reasonable given the prior approved FCRA settlements and the defenses asserted by Defendant.
2 Defendant disputes Plaintiff's estimates and believes the amount Plaintiff can recover for the Class, if
3 anything at all, is actually much lower. Given the amount of the Settlement as compared to the
4 potential value of the claims, the Settlement is most certainly fair and reasonable.⁷ Clearly, the goal
5 of this litigation has been met. Decl. Nordrehaug, ¶6.

6 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
7 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
8 Defendant present serious threats to the claims of the Plaintiff and the other Class Members. Defendant
9 also asserted that Defendant's practices complied with all applicable Labor laws. Defendant argued
10 that all work time was paid for and that the rounding practices were lawful. Defendant contended that
11 their meal and rest period policies fully complied with California law, that Defendant's timekeeping
12 system recorded meal periods, and that all meal periods were provided. Defendant argued that its
13 payment of meal period premiums is evidence of Defendant's compliance and lawful practices.
14 Further, Defendant argued that Defendant was not required to record rest periods. Defendant also
15 maintained that an on premise policy for meals and rest periods is not illegal. Defendant could argue
16 that the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), weakened
17 Plaintiff's claims, on liability, value, and class certifiability as to the meal and rest period claims. As
18 to expense reimbursement, Defendant maintained that employees were not required to use their cell
19 phones and any use of their cell phone was voluntary for their convenience and therefore not subject

20
21 2016) (approval of FCRA settlement with gross recovery of \$20 per class member); *Patrick v.*
22 *Interstate Mgmt. Co., LLC*, No. 8:15-cv-1252, ECF No. 42 (M.D.Fla. 2016) (approval of FCRA claim
23 where class members received \$9 each); *Landrum v. Acadian Ambulance Serv., Inc.*, No. 14-cv-1467,
ECF No. 37 (S.D. Tex. 2015) (approval of FCRA disclosure settlement of \$10 per person); *Walker v.*
McClane/Midwest, Inc., No. 2:14-cv-04315, ECF No. 29 (W.D. Mo. 2015) (\$24 per person).

24 ⁷ See *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)
25 approving settlement which represented "roughly one-sixth of the potential recovery"; *Stovall-Gusman*
26 *v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval
27 where "the proposed Total Settlement Amount represents approximately 10% of what class might have
28 been awarded had they succeeded at trial."); *Viceral v. Mistras Grp., Inc.*, 2016 WL 5907869 (N.D.
Cal. 2016) (approving wage and hour class action settlement amounting to 8.1% of full verdict value);
Ma v. Covidien Holding, Inc., 2014 WL 2472316, (C.D. Cal. 2014) (approving wage and hour class
action settlement worth "somewhere between 9% and 18%" of full verdict value).

1 to Labor Code §2802. Finally, Defendant also argues that based on their facially lawful practices, they
2 acted in good faith and without willfulness, which if accepted would negate the claims for waiting time
3 penalties and/or inaccurate wage statements. As to the FCRA claim, Defendant argued that it complied
4 with FCRA in all respects. *See Coleman v. Kohl's Dep't Stores, Inc.*, 2015 U.S. Dist. LEXIS 135746,
5 *17 (N.D. Cal. 2015) (holding a release in a separate document does not violate FCRA); *Luna v.*
6 *Hansen & Adkins Auto Transp., Inc.*, 2018 U.S. Dist. LEXIS 100055, *18-*19 & n.6 (C.D. Cal. 2018).
7 Finally, the court may find remitter/reduction of the statutory damages appropriate. *See e.g.*
8 *Klingensmith v. Max & Erma's Restaurants, Inc.*, 2007 U.S. Dist. LEXIS 81029, 2007 WL 3118505,
9 at *5 (E.D.Pa. 2007). If successful, Defendant's defenses could eliminate or substantially reduce any
10 recovery to the Class. While Plaintiff believes that these defenses could be overcome, Defendant
11 maintains these defenses have merit and therefore present a serious risk to recovery by the Class. Decl.
12 Nordrehaug, ¶ 24.

13 There was also a significant risk that, if the Action was not settled, Plaintiff would be unable
14 to obtain class certification and thereby not recover on behalf of any employees other than herself.
15 Defendant argued that the individual experience of each putative class member varied with respect to
16 the claims. Defendant could also contest class certification by arguing injury and good faith were case
17 by case determinations that precluded class certification. Plaintiff is aware of cases where class
18 certification of similar claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th 885, 256
19 Cal. Rptr. 3d 547 (2019) (denying certification of meal and rest break claims). Defendant also
20 contended that individual differences in work experiences not only impacted damages but would also
21 impact certification. Finally, even if class certification was successful, as demonstrated by the
22 California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there
23 are significant hurdles to overcome for a class wide recovery even where the class has been certified.
24 While other cases have approved class certification in wage and hour claims, class certification in this
25 action would have been hotly disputed and was by no means a foregone conclusion. Decl. Nordrehaug,
26 ¶ 25.

27 After arm's length negotiations between experienced and informed counsel, the Parties
28 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of

1 \$1,350,000. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

2 In light of the above-referenced uncertainty in the law, the risk, expense, complexity,
3 and likely duration of further litigation likewise favors the settlement. Regardless of
4 how this Court might have ruled on the merits of the legal issues, the losing party likely
5 would have appealed, and the parties would have faced the expense and uncertainty of
6 litigating an appeal. 'The expense and possible duration of the litigation should be
7 considered in evaluating the reasonableness of [a] settlement.'"

8 2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
9 (9th Cir. 2000).)

10 **3. The Settlement Does Not Improperly Grant Preferential Treatment To**
11 **Class Representatives or Segments Of The Class**

12 The relief provided in the Settlement will benefit all members of the Class. The Settlement does
13 not grant preferential treatment to Plaintiff or segments of the Class in any way. Payments to the Class
14 Members are all determined under a neutral methodology. Each Participating Class Member will
15 receive the same opportunity to participate in and receive payment through a neutral formula that is
16 based upon the Compensable Workweeks for that individual. Decl. Nordrehaug, ¶4.

17 Plaintiff will apply to the Court for a Class Representative Service Payment in consideration
18 for the service and for the risks undertaken on behalf of the Class. (Agreement at ¶44(a).) Plaintiff
19 performed her duty admirably by working with Class Counsel. Decl. Nordrehaug at ¶27. At this stage,
20 the requested service award of \$10,000 is well within the accepted range of awards for purposes of
21 preliminary approval. See e.g. *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D.
22 Cal. 2018) (awarding \$12,500 where average class member payment was \$351); *Holman v. Experian*
23 *Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014) (approving \$10,000 service
24 award where class member recovery was \$375); *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008
25 WL 4473183, *7 (S.D.Cal. 2008) (awarding \$25,000 service award to each of six plaintiffs in overtime
26 class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D.Cal. 2007) (awarding \$25,000
27 service award in overtime class action and a pool of \$100,000 in enhancements). As explained in
28 *Glass*, service awards are routinely awarded to class representatives to compensate the employees for
the time and effort expended on the case, for the risk of litigation, for the fear of suing an employer and
retaliation there from, and to serve as an incentive to vindicate the statutory rights of all employees.
2007 WL 221862 at *16-17.

1 **4. The Stage Of The Proceedings Are Sufficiently Advanced To Permit**
2 **Preliminary Approval Of The Settlement**

3 The stage of the proceedings at which this Settlement was reached also militates in favor of
4 preliminary approval and ultimately, final approval of the Settlement. Class Counsel has conducted
5 a thorough investigation into the facts of the class action. Class Counsel began investigating the Class
6 Members' claims before the Action was filed. Class Counsel conducted a review and analysis of the
7 relevant documents and data. Class Counsel was also experienced with the claims at issue here, as
8 Class Counsel previously litigated and settled similar claims in other actions. Accordingly, the
9 agreement to settle did not occur until Class Counsel possessed sufficient information to make an
10 informed judgment regarding the likelihood of success on the merits and the results that could be
11 obtained through further litigation. Decl. Nordrehaug at ¶28.

12 Based on the foregoing data and their own independent investigation and evaluation, Class
13 Counsel is of the opinion that the Settlement with Defendant for the consideration and on the terms set
14 forth in the Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light
15 of all known facts and circumstances, including the risk of significant delay, defenses asserted by
16 Defendant, and numerous potential appellate issues. There can be no doubt that counsel for both parties
17 possessed sufficient information to make an informed judgment regarding the likelihood of success on
18 the merits and the results that could be obtained through further litigation. Decl. Nordrehaug at ¶29.

19 In *Glass*, the Northern District of California granted final approval of an overtime wage action
20 although in *Glass* no formal discovery had been conducted prior to the settlement:

21 Here, no formal discovery took place prior to settlement. As the Ninth Circuit has
22 observed, however, "[i]n the context of class action settlements, 'formal discovery is not
23 a necessary ticket to the bargaining table' where the parties have sufficient information
24 to make an informed decision about settlement."

25 *Glass*, 2007 U.S. Dist. LEXIS 8476 at *14 (quoting *In re Mego Financial Corp. Securities Litigation*,
26 213 F.3d at 459).

27 Here, Class Counsel was in equal position to evaluate the fairness of this Settlement because
28 Class Counsel performed informal discovery, received all necessary information which was evaluated
with the assistance of an expert, and also performed independent investigations and due diligence to
confirm the accuracy of the information supplied by Defendant.

1 **V. THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES ONLY**

2 Plaintiff contends that the proposed settlement meet all of the requirements for class
3 certification under California Code of Civil Procedure § 382 as demonstrated below, and therefore, the
4 Court may appropriately approve the Class as defined in the Agreement. This Court should
5 conditionally certify the Class for settlement purposes only, which consist of “both the California Class
6 and the FCRA Class.” This Court should conditionally certify the California Class for settlement
7 purposes only, defined as follows:

8 All individuals who are or were employed by Defendant in California and who are or
9 were classified as non-exempt employees during the California Class Period.

10 (Agreement at ¶5.)

11 The California Class Period is December 21, 2016 to August 15, 2022. (Agreement at ¶4.) This Court
12 should also conditionally certify the FCRA Class for settlement purposes only, defined as follows:

13 All employees and prospective employees of Defendant in the United States on whom
14 Defendant conducted a background check during the FCRA Class Period.

15 (Agreement at ¶5.)

16 The FCRA Class Period is December 21, 2015 to August 15, 2022. (Agreement at ¶19.)

17 **A. California Code of Civil Procedure § 382**

18 Plaintiff seeks certification of this Class for settlement purposes under California Code of Civil
19 Procedure § 382. The California Supreme Court has summarized the standard for determining whether
20 class certification is appropriate as follows:

21 Code of Civil Procedure Section 382 authorizes class actions “when the question is one
22 of a common or general interest, of many persons, or when the parties are numerous,
23 and it is impracticable to bring them all before the court....” The party seeking
24 certification has the burden to establish the existence of both an ascertainable class and
25 a well-defined community of interest among class members. (*citations omitted*). The
26 “community of interest” requirement embodies three factors: (1) predominant common
27 questions of law or fact; (2) class representatives with claims or defenses typical of the
28 class; and (3) class representatives who can adequately represent the class.

Sav-On Drug Stores, Inc. v. Superior Court, 34 Cal. 4th 319, 326 (2004).

While Defendant reserve all rights to dispute that the Plaintiff can satisfy these requirements,
the Parties agree that Defendant will not dispute that these requirements may be satisfied in this case
for purposes of settlement only and therefore, the proposed Class should be certified for purposes of

1 settlement only. (Agreement at ¶47(a).)

2 **B. The Proposed Class Is Ascertainable and Numerous**

3 Plaintiff brings this action on behalf of a Class of individuals during the applicable Class Period.
4 Plaintiff asserts that all of these individuals are ascertainable because the class members can readily be
5 determined through examination of Defendant's files. Given that the California Class consists of
6 approximately 2,502 members and the FCRA Class consists of approximately 1,600 members, Plaintiffs
7 maintain that numerosity is clearly satisfied. *See Bowles v. Superior Court*, 44 Cal.2d 574 (1955) (class
8 with 10 members sufficiently numerous); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981)
9 (class of 48 members satisfies numerosity requirement.) Here, Plaintiffs assert that the 2,502 current
10 and former employees that comprise the California Class and the 1,600 individuals who comprise the
11 FCRA Class can be identified based on Defendant's records and are sufficiently numerous for class
12 certification. Decl. Nordrehaug at ¶30.

13 **C. Common Issues of Law and Fact Predominate**

14 Predominance of common issues of law or fact does not require that the common issues be
15 dispositive of the entire controversy or even that they be dispositive of all liability issues. 1 *Newberg*
16 *on Class Actions*, Section 4.25 at 4-82, 4-83 (1992). "Predominance is a comparative concept, and 'the
17 necessity for class members to individually establish eligibility and damages does not mean individual
18 fact questions predominate.'" *Sav-On*, 34 Cal. 4th at 334.

19 Commonality exists if there is a predominant common legal question regarding how an
20 employer's policies impact its employees. *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524,
21 1536 (2008) ("[T]he common legal question remains the overall impact of Diva's policies on its
22 drivers.") Whether the plaintiff is likely to prevail on their theory of recovery is irrelevant at the
23 certification stage since the question is "essentially a procedural one that does not ask whether an action
24 is legally or factually meritorious." *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2003).

25 Here, Plaintiff contends that common questions of law and fact are present, and specifically the
26 common questions of whether Defendant engaged in illegal rounding of work time, whether Defendant
27 properly paid for all time worked, whether the Defendant failed to provide meal and rest periods,
28 whether Defendant failed to provide required expense reimbursement, whether Defendant violated the

1 FCRA in performing background checks, and whether Class Members are entitled to damages and
2 penalties as a result of these practices. Decl. Nordrehaug, ¶30. Defendant disputes that common
3 questions predominate but will not oppose such a finding for purposes of this Settlement only.

4 **D. The Claims of the Plaintiff Are Typical of the Class Claims**

5 The typicality requirement requires the Plaintiff to demonstrate that the members of the class
6 have the same or similar claims as the Plaintiff. “The typicality requirement is met when the claims
7 of the [p]laintiff arise from the same event or are based on the same legal theories.” *Tate v.*
8 *Weyerhaeuser Co.*, 723 F.2d 598, 608 (8th Cir. 1983). In *Hanlon*, *supra*, 150 F.3d at 1020, the Ninth
9 Circuit held that “[u]nder the rule's permissive standards, representative claims are ‘typical’ if they are
10 reasonably coextensive with those of absent class members; they need not be substantially identical.”

11 In the instant case, Plaintiff contends that there can be little doubt that the typicality requirement
12 is satisfied. The Plaintiff, like every other member of the Class, worked for Defendant as a non-exempt
13 employee during the Class Period. Plaintiff contends that, like every other member of the Class, she
14 was subject to the same practices and policies of Defendant and are subject to the same defenses.
15 Plaintiff also contends that she received the same FCRA disclosure and signed the same FCRA
16 authorization as every other member of the FCRA Class. Thus, Plaintiff asserts that the claims of the
17 Plaintiff and the Class Members arise from the same course of conduct by the Defendant, involve the
18 same employment policies and practices of Defendant, and are based on the same legal theories. Decl.
19 Nordrehaug at ¶30. For purposes of settlement, Plaintiff asserts that the typicality requirement is met
20 as to the common issues presented in this case. Defendant does not oppose a finding of typicality for
21 purposes of this Settlement only.

22 **E. The Class Representation Fairly and Adequately Protects the Class**

23 Plaintiff contends that the Class Members are adequately represented here because Plaintiff and
24 representing counsel (a) do not have any conflicts of interest with other class members, and (b) will
25 prosecute the case vigorously on behalf of the class. *Hanlon*, 150 F.3d at 1020. This requirement is
26 met here. First, Plaintiff is well aware of her duties as the representatives and has actively participated
27 in the prosecution of this case to date. She effectively communicated with counsel, provided
28 documents to counsel and participated in the investigation and negotiations in the Action. Second,

1 Plaintiff retained competent counsel who are experienced in employment class actions and who have
2 no conflicts. Decl. Nordrehaug at ¶ 31. Third, there is no antagonism between the interests of the
3 Plaintiff and those of the Class. Both the Plaintiff and the Class Members seek monetary relief under
4 the same set of facts and legal theories. Defendant disputes that the adequacy requirement is satisfied
5 but will not oppose such a finding for purposes of this Settlement only.

6 **F. The Superiority Requirement Is Met**

7 To certify a class, the Court must also determine that a class action is superior to other available
8 methods for the fair and efficient adjudication of the controversy. “Where classwide litigation of
9 common issues will reduce litigation costs and promote greater efficiency, a class action may be
10 superior to other methods of litigation.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir.
11 1996). As courts have previously observed:

12 Absent class treatment, each individual plaintiff would present in separate, duplicative
13 proceedings the same or essentially the same arguments and evidence, including expert
14 testimony. The result would be a multiplicity of trials conducted at enormous expense
15 to both the judicial system and the litigants. “It would be neither efficient nor fair to
16 anyone, including defendants, to force multiple trials to hear the same evidence and
17 decide the same issues.”

18 *Sav-On*, 34 Cal. 4th at 340, citing *Boggs v. Divested Atomic Corp.*, 141 F.R.D. 58, 67 (S.D. Ohio 1991).

19 Here, Plaintiff contends that a class action is the superior mechanism for resolution of the claims
20 as pled by the Plaintiff. While Defendant disputes that class treatment is superior, Defendant does not
21 dispute a finding of superiority in this action for purposes of this Settlement only.

22 **VI. THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE**

23 The Court has broad discretion in approving a practical notice program. The Parties have
24 agreed upon procedures by which the Class Members will be provided with written notice of the
25 Settlement similar to that approved and utilized in hundreds of class action settlements. In accordance
26 with the Agreement, Defendant will provide to the Settlement Administrator an electronic database
27 containing each Class Member’s Class Data. (Agreement at ¶47(b).) Within 15 days after receiving
28 the Class Data, the Settlement Administrator will mail the Class Notice Packets to all Class Members
via first-class U.S. Mail using the most current mailing address information available. (Agreement at
¶47(b).) The Class Notice, drafted jointly and agreed upon by the Parties through their respective

counsel and to be approved by the Court, includes all relevant information. (See Exhibit "A" to the Agreement.) The Class Notice will include, among other information: (i) information regarding the Action; (ii) the impact on the rights of the Class Members if they do not opt out; (iii) information to the Class Members regarding how to opt out and how to object to the Settlement; (iv) the estimated Settlement Share for each of the Class Members; (v) the amount of attorneys' fees and expenses to be sought; (vi) the amount of the Plaintiff's service award request; and (vii) the anticipated expenses of the Settlement Administrator. Decl. Nordrehaug at ¶32.

The Class Notice will state that the Class Members shall have forty-five (45) days from the date that the Notice is mailed to them to request exclusion (opt-out) or to submit an objection. (Agreement at ¶47(c).) In the event of a re-mailing, this response deadline will be extended by an additional 15 days. (Agreement at ¶47(b).) Class Members shall be given the opportunity to object to the Settlement and/or requests for attorneys' fees and expenses and to appear at the Final Approval Hearing. (Agreement at ¶47(c).) Class Members who do not submit a timely and proper request to opt-out will automatically receive a payment of their Settlement Share. This notice program was designed to meaningfully reach the Class Members and it advises them of all pertinent information concerning the Settlement. Decl. Nordrehaug at ¶32. The mailing and distribution of the Class Notice satisfies the requirements of due process and is the best notice practicable under the circumstances and complies with Rules of Court 3.766 and 3.769(f).

VIII. CONCLUSION

Plaintiff respectfully requests that the Court preliminarily approve the proposed settlement and sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the final fairness hearing for a date that is one hundred twenty (120) days from the date of Preliminary Approval.

Dated: January 4, 2023

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

By: /s/ Kyle Nordrehaug
Kyle R. Nordrehaug, Esq.
Attorney for Plaintiff

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