

Patrick R. Kitchin, Esq. (State Bar No. 162965)
KITCHIN LEGAL, APC
1999 Harrison Street, 18th Floor, #3535
Oakland, CA 94612
Telephone: (415) 677-9058
Email: prk@kitchinlegal.com

Nicholas C. Rowley, Esq. (State Bar No. 220036)
Kelly B. Hanker, Esq. (State Bar No. 257596)
TRIAL LAWYERS FOR JUSTICE
877 S. Victoria Ave., Suite 201
Ventura, CA 93003
Tel: 310-855-3727
Fax: 310-855-3595
Email: KELLY@TL4J.COM, TEAMOJAI@TL4J.COM

Attorneys for Ildiko O'Connor, Laura Raya and Dina Shashua

SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF VENTURA

ILDIKO O'CONNOR, an individual and on
behalf of all others similarly situated;
LAURA RAYA, an individual and on
behalf of all others similarly situated; and
DINA SHASHUA, an individual and on
behalf of all others similarly situated;

Plaintiff,

vs.

FERGUSON SM, INC. a California
corporation; SEAN CORREA, an individual;
THOMAS HUMPHREY, an individual, and
MICHAEL REYES, an individual; and
DOES 1-50, inclusive,

Defendants.

Case No.: 56-2020-00543357-CU-OE-VTA

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

Hearing Date: May 16, 2024
Hearing Time: 8:30 a.m.
Department 40
Judge: Hon. Judge Mark S. Borrell

Complaint Filed: July 17, 2020
SAC Filed: Nov. 24, 2020
Trial Date: None set

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1 **I. INTRODUCTION AND REQUEST FOR RELIEF**

2 Plaintiffs Ildiko O'Connor, Laura Raya and Dina Shashua (collectively, "Plaintiffs") seek
3 final approval of the Stipulation of Settlement and Release of Claims ("Settlement") entered into
4 between Plaintiffs, on behalf of themselves and other similarly-situated employees, and Defendants
5 Ferguson SM, Inc., Sean Correa, Thomas Humphrey, Michael Reyes (Ferguson, Correa, Humphrey
6 and Reyes are collectively the "Ferguson Defendants"), Infiniti HR West, LLC and HR Service
7 Group, LLC, Infiniti HR (collectively the "Infiniti Defendants"). The Infiniti Defendants and the
8 Ferguson Defendant are collectively "Defendants".)

9 The Settlement is the result of the hard work and good judgment of Plaintiffs and their
10 counsels. The Parties reached agreement on the terms of a global settlement with the assistance of
11 the Hon. Jamie Jacobs-May (Ret.) of JAMS on January 24, 2023. The Court preliminarily approved
12 the parties' settlement on January 18, 2024.

13 The compromise Settlement will create a Settlement Fund to be established by Defendants
14 in the amount of One Hundred Seventy-Five Thousand Dollars and No/Cents (\$175,000.00). The
15 Settlement Class¹ consists of:

16 "All licensed cosmetologists who worked for the Ferguson Defendants or the
17 Infiniti Defendants, at any time in the state of California from May 1, 2018,
18 through July 31, 2021."

19 The Settlement Class, including the PAGA Aggrieved Employees, includes 186 former
20 Employees of Defendants. There are no subclasses.

21 The settlement will resolve a wide range of contested wage and hour claims. (Kitchin Decl.,
22 ¶ 2, Exhibit 1: Settlement Agreement ¶¶ 20 and 26) The Settlement provides for a financial benefit
23 to each Settlement Class Member ("Class" or "Class Member"). To settle claims and remedies
24 under Labor Code §s 2699, *et seq.*, subject to Court approval, the parties allocated \$7,500.00 to

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27 ¹ In this brief and accompanying declarations, Plaintiffs use settlement-related terms as defined in the parties' settlement agreement.

1 PAGA penalties, with 75% of this amount (\$5,625.00) to be paid directly to the state of California,
2 and 25% of this amount (\$1,875.00) to be paid to the PAGA Aggrieved Employees.

3 Having now completed the notice process approved by the Court on January 18, 2024,
4 Plaintiffs now move for final approval of all payments allocated and provided for by the Settlement,
5 to be paid from the Settlement Fund, including payment to the Class, Service Awards to the named
6 Plaintiffs, Attorneys Fees and Costs², as well as payment in the amount of \$9,750.00 to the
7 Settlement Administrator, Phoenix Class Action Administration Solutions (“Phoenix”) for the
8 administration costs.

9 The Settlement is the product of arm’s-length and good-faith negotiations by experienced
10 counsel, presided over by a well-respected mediator experienced in mediating wage-and-hour class
11 actions. The Settlement as a whole is fair, adequate, and reasonable.³ Phoenix provided notice to
12 the 184 Class Members, and no Class Member objected to or opted out of the Settlement. (Decl. of
13 Taylor Mitzner, Phoenix., ¶¶ 6, 9-11)

14 Plaintiffs now respectfully request that the Court grant final approval of their Settlement
15 and order the parties to implement its terms.

16 **II. SUMMARY OF THE CASE**

17 **A. The Parties**

18 Ferguson SM, Inc. was formed in mid-2018 and provided salon and beauty services to
19 retirement communities in California. Defendants established and operated salons in Ventura
20 County, Los Angeles County, Napa County, Orange County, Riverside County, San Diego County,
21 and Sonoma County. The company ceased operations in July 2020. The individual defendants,
22 Sean Correa, Thomas Humphrey and Michael Reyes, were Ferguson officers.

23 HR Service Group LLC and Infiniti HR West are both Professional Employer Organizations
24

25 ² In the interests of judicial efficiency, Plaintiffs incorporate by reference and respectfully refer the Court to Plaintiffs’
26 Motion for Attorneys’ Fees, Costs and Service Awards to Plaintiffs.

27 ³ A true and correct copy of the fully executed Settlement Agreement is attached as Exhibit 1 to the Decl. of Patrick R. Kitchin in support of this motion.

1 (“PEO”). Ferguson outsourced its payroll and human resources obligations to the Infiniti Entities
2 from November 2018 through the end of 2019 only.

3 Plaintiffs, California licensed cosmetologists, allege that when they and the Class were
4 employed by Defendants, Defendants utilized wage systems that failed to comply with California
5 law. The systems were based on a legally and invalid piece rate schemes that failed to pay Plaintiffs
6 and the Settlement Class all the compensation due to them.

7 B. Procedural History: Pleadings, Discovery and Mediation

8 On July 17, 2020, Plaintiff O’Connor filed a putative class action in the California Superior
9 Court for the County of Ventura, asserting the several causes of action arising out of her
10 employment. On July 30, 2020, this case was designated as a class action, and an exceptional
11 action. On July 29, 2020, pursuant to the California Labor Code Private Attorneys General Act
12 (“PAGA”), Plaintiff gave notice to the California Labor and Workforce Development Agency
13 (“LWDA”) pursuant to Labor Code § 2698.3(a)(1)(A) of alleged violations of California
14 employment law by Defendants.

15 On September 3, 2020, Plaintiffs O’Connor, Raya and Shashua filed a first amended
16 complaint. On November 24, 2020, Plaintiffs filed a second amended complaint (the operative
17 complaint) asserting causes of action for: (1) Failure to Pay Minimum Wages; (2) Failure to Pay
18 Overtime Wages; (3) Failure to Pay for Nonproductive Time and Rest/Recovery Periods for Piece
19 Rate Workers; (4) Violations of Labor Code § 204.11; (5) Failure to Provide Meal Periods; (6)
20 Failure to Provide Rest Periods; (7) Violations of Labor Code § 226; (8) Willful Failure to Pay All
21 Wages Due Upon Termination; (9) Unfair Competition; (10) Declaratory Relief; and (11) Labor
22 Code Private Attorneys General Act. Defendants generally denied all allegations.

23 Plaintiffs subsequently prepared and served written discovery on Ferguson, the Infiniti
24 Defendants and the individual defendants to gather information about their employment practices
25 and to obtain timekeeping and payroll records for Plaintiffs and the Class.⁴ Plaintiffs also took the
26

27 ⁴ Plaintiffs obtained an Order from the Court on March 8, 2021 to mail privacy notices to the putative class. No

1 deposition of Defendant Thomas Humphrey, the person deemed most qualified at Ferguson to
2 address critical matters at issue in the Litigation. (See Plaintiffs' Motion for Attorneys' Fees, Costs
3 and Service Awards to Plaintiffs, filed herewith.)

4 Prior to mediation, Defendants provided Plaintiffs with substantial additional information
5 about the Class, and sufficient data to develop an evidence-based damages and penalties models.
6 Plaintiffs' counsel retained a well-qualified wage economist, with substantial experience in wage
7 and hour class litigation, including claims under the PAGA. (Kitchin Decl., ¶¶ 5, 10-12) Plaintiffs'
8 expert consultant developed a class wide mode based on data produced by Ferguson and the Infiniti
9 Defendants, and grounded on the claims Plaintiffs asserted in the Litigation. (*Id.*)

10 On January 24, 2023, after substantial preparation, the parties mediated the claims with
11 Judge Jamie Jacobs-May (Ret.). (Kitchin Decl., ¶ 6) Each of the Plaintiffs came well prepared and
12 actively participated in mediation. Plaintiffs' settlement posture throughout the day was grounded
13 on their expert's careful analysis of timekeeping and payroll records. Plaintiffs had evaluated the
14 strengths and weaknesses of their claims, and of Defendants' affirmative defenses, and had
15 carefully weighed the fact that Ferguson was out of business and that the Litigation and Settlement
16 was being funded primarily by one of the individual defendants, Thomas Humphreys. (*Id.* at ¶¶ 7,
17 and 9-13) After a full-day mediation with Judge Jacob-Mays, the Parties agreed on the general
18 terms of a proposed settlement. After additional negotiations, the Parties executed a memorandum
19 of understanding upon which they based a long-form settlement agreement.

20 C. Summary of the Claims

21 This is a proposed class action and PAGA representative action asserting eleven causes of
22 action arising out of Defendants' alleged violations of California law. The Ferguson Defendants
23 employed 186 Class Members between March 2018 and July 2020. The Infiniti Defendants jointly
24 employed Plaintiffs and Class Members between November 2018 and December 31, 2019.

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26 _____
27 person objected to the production of their employment information to Plaintiffs to use in the prosecution of this case.

1 Plaintiffs allege that Defendants denied them and the Settlement Class employment rights
2 mandated by the California Labor Code and applicable IWC Wage Order 5-2001. Plaintiffs allege
3 they were required to work off of clock without wages, work overtime hours without correct
4 overtime wages, and that they were denied meal and rest periods. They allege Defendants failed to
5 provide them compliant wage records, including paystubs, willfully failed to pay all wages due
6 upon termination and engaged in unfair business practices subject to California Business &
7 Professions Code §§ 17200, et seq. (*See Second Amended Complaint, passim.*)

8 (i) Unpaid Wages: Defendants paid the Class wages they described as commissions
9 for providing hair and nail services to Defendants' customers. In fact, Defendants paid Plaintiffs
10 and the Class on the basis of a defective piece rate that failed to compensate them for nonproductive
11 time and that failed to pay them separately for rest and recovery periods. "A plan which simply
12 relies upon a 'percentage' of some sum such as the cost of the goods sold, or the services rendered
13 by an establishment does not constitute a 'commission wage'; the worker receiving the commission
14 must be principally involved in selling the goods or the services upon which the commission is
15 measured. Many of the plans which simply equate 'commission' with 'percentage' are, if carefully
16 reviewed, revealed to be nothing more than piece rate plans." Division of Labor Standards
17 Enforcement Policies and Interpretations Manual, § 34.1.2, emphasis added.

18 (ii) Rest Periods and Meal Periods: Defendants failed to maintain a record of meal
19 periods taken by Plaintiffs and the Settlement Class, and failed to provide them with all meal and
20 rest periods, or provided meal periods late. Yet they never paid employees an extra hour of
21 compensation when they were not provided breaks. (See O'Connor Decl., ¶¶ 7-8, Shashua Decl.,
22 ¶¶ 6-9, and Raya Decl., ¶¶ 6-8 in support of motion for preliminary approval.)

23 (iii) Wage Statement and Record Keeping Violations: In violation of Labor Code § 226,
24 Defendants failed to maintain and provide employees with accurate payroll records, including
25 paystubs showing: (1) gross wages earned, (2) total hours worked, (3) the number of piece-rate
26 units earned and applicable piece rates, (4) net wages earned, and (5) all applicable hourly rates in
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1 effect during the pay period and the corresponding number of hours worked at each hourly rate by
2 the employee. (See O'Connor Decl., ¶ 10, Shashua Decl., ¶ 10, and Raya Decl., ¶10 in support of
3 motion for preliminary approval.)

4 (iv) Waiting Time Penalties (Labor Code § 203): Plaintiffs and the Settlement Class
5 were not paid all wages upon termination, including compensation for all hours worked and for
6 penalty wages for meal and rest periods not provided.

7 (v) Private Attorneys General Act: Plaintiffs' PAGA claims include: failure to provide
8 meal periods under Labor Code § 226.7; failure to provide rest periods under § 226.7; failure to pay
9 overtime under Labor Code § 510; underpaid employees under § 558; failure to pay wages when
10 due under §§ 201-204; failure to pay wages at place of discharge under § 208; and § 1199.

11 (vi) Damages: Plaintiffs seek damages for unpaid regular and overtime wages, including
12 liquidated damages for unpaid minimum wages, statutory penalties for meal and rest period
13 violations, statutory penalties for wage keeping violations, waiting time penalties and for civil
14 penalties under the PAGA.⁵

15 **III. SUMMARY OF KEY TERMS OF THE SETTLEMENT AND DISTRIBUTION** 16 **PLAN**

17 The Settlement agreement contains all of the terms necessary to effectuate a fair distribution
18 of the settlement funds and to protect the interests of absent Class Members. (See Exhibit 1 to Decl.
19 of Patrick R. Kitchen.)

20 Infiniti Defendants' share of the Settlement Amount, totaling Ninety Thousand Dollars and
21 No/Cents (\$90,000.00), will be paid to the Claims Administrator fifteen (15) calendar days after
22 the Effective Date. One-half of Ferguson Defendants' Settlement Amount, equal to Forty-Two
23 Thousand and Five Hundred Dollars and No/Cents (\$42,500.00), will be paid to the Claims
24 Administrator fifteen (15) calendar days after the Effective Date.

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26
27 ⁵ Kitchen Decl., ¶ 10, and Exhibit 1

1 This first portion of the Gross Settlement Amount (\$132,500.00) will include 100% of the
2 approved enhancement payments to Plaintiffs (\$15,000.00), 100% of the approved costs to Class
3 Counsels (\$17,598.56), \$23,837.00 out of the total approved attorneys' fees, and \$5,625.00 to the
4 LWDA, with the remainder to be paid to the Settlement Class as the complete Class payment
5 (\$66,41.94), which includes \$1,875.00 to the PAGA Aggrieved Employees. No later than six
6 months after the Effective Date, Ferguson Defendants will deposit the second and remaining
7 settlement payment of Forty-Two Thousand and Five Hundred Dollars and No/Cents (\$42,500.00)
8 with the Claims Administrator. In accordance with the settlement agreement, this final portion of
9 the Gross Settlement Amount shall be distributed as follows: the remaining approved attorneys'
10 fees (\$34,495), and 100% of the Claims Administrator fees (\$9,750). The Settlement is non-
11 reversionary. (Exhibit 1 to Kitchin Decl.)

12 The claims released by Settlement Class Members are limited to those that were or could
13 have been made based on the factual allegations in the SAC. The named Plaintiffs, in turn, will
14 provide Defendants with general waivers. (See ¶ 73 of the Settlement, Exhibit 1 to Kitchin Decl.)

15 The Claims Administrator calculated the pro rata portion of the NSA owed to each Class
16 Member based on data produced by Defendants. Each individual notice included the individual's
17 estimated recovery. The average individual settlement value is \$358.83. (Mitzner Decl, ¶14)

18 Settlement checks will be voided if uncashed within 180 days. Voided Settlement Checks
19 shall constitute "unpaid residuals in Class Action litigation" as described in *Cundiff v. Verizon*
20 *California, Inc.* (2008) 167 Cal.App.4th 718. Residuals will be paid to Swords To Plowshares:
21 Veterans Rights Organization as a *cy pres* award.

22 **IV. THE SETTLEMENT MERITS FINAL APPROVAL**

23 When evaluating a class action settlement under California Code of Civil Procedure § 382
24 for final approval, a court's inquiry focuses upon whether the settlement is "fair, adequate and
25 reasonable." *Wershba v. Apple Computer Inc.*, 91 Cal.App.4th 224, 244-245 (2004); *Dunk v. Ford*
26 *Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996). A settlement is "fair, adequate and reasonable" and
27

1 therefore merits final approval when “the interests of the class are better served by the settlement
2 than by further litigation.” *Manual for Complex Litigation* (4th ed. 2008) § 21.61, 462 (“*Manual*”).
3 These conditions are met here.

4 While the Court possesses “broad discretion” in determining whether a proposed class action
5 settlement is fair, the Court’s inquiry “must be limited to the extent necessary to reach a reasoned
6 judgment that the agreement is not the product of fraud or overreaching by, or collusion between,
7 the negotiation Parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to
8 all concerned.” *Dunk*, 48 Cal.App.4th at 1801 (quoting *Officers for Justice Civil Serv. Comm’n*, 688
9 F.2d 615, 625 (9th Cir. 1982)). A court’s approval of a class action settlement will only be reversed
10 for a clear abuse of discretion. *Dunk*, 48 Cal.App.4th at 1802.

11 A. The Settlement Is Presumed Fair

12 “[A] presumption of fairness exists where: (1) the settlement is reached through arm’s-length
13 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
14 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
15 small. *Dunk*, 48 Cal.App.4th at 1802 (citing Newberg & Conte, *Newberg on Class Actions* § 11.41,
16 pp. 11-91). Here, the Settlement clearly meets these points and is thus presumed fair.

17 The Settlement was reached through arm’s length negotiations. The Settlement was only
18 reached after significant discovery, investigation, negotiations and a mediation session facilitated by
19 a respected mediator with extensive experience in employment law.

20 Class Counsel has conducted a thorough investigation and, well-apprised of the facts and
21 risks, was able to garner a favorable result for the Class. Investigation efforts included the formal
22 discovery, deposition of Ferguson’s CEO, the review of documents, the generation of a damage and
23 penalty model by a qualified wage economist, obtaining data for mediation, and interviews with a
24 number of Defendants’ employees. The Settlement came at a stage in litigation where both Plaintiffs
25 and Defendants were informed of the facts relevant to the case, as well as the strengths and
26 weaknesses of their respective positions, and the risks of continued litigation.

1 Class Counsels are well experienced in wage and hour class actions such as this. Class
2 Counsels' conduct in this case and the results achieved in the face of the primary defendant ceasing
3 operations exemplify counsels' expertise, skill, experience and dedication to their clients and the
4 Class.⁶

5 Finally, there is not a single objection to, nor opt-out from, the Settlement by any Class
6 Member.⁷ Notice of the Settlement was issued to the entire Class by the Court-approved process
7 and not a single Class Member has objected. Accordingly, the presumption that the Settlement is
8 fair applies. As further shown below, this Court should find the settlement fair and reasonable and
9 grant final approval.

10 B. The Relevant Criteria Support Final Approval

11 California Courts consider several factors in deciding whether to grant final approval of a
12 class action settlement, including: (1) the amount offered in Settlement; (2) the risks inherent in
13 continued litigation; (3) the complexity, expense, and likely duration of the litigation absent
14 settlement; (4) the extent of discovery completed and the stage of the proceedings when settlement
15 was reached; (5) the experience and views of class counsel; and (6) the reaction of class members.
16 *Dunk*, 48 Cal.App.4th at 1801; *Wershba*, 91 Cal.App.4th at 244-45; *Kullar v. Foot Locker Retail,*
17 *Inc.*, 168 Cal.App.4th 116, 119 (2008). Here, evaluation of each of these factors favors final approval
18 of the Settlement.

19 **1. The Value of the Settlement**

20 When evaluating the Settlement for fairness, the Court should weigh the immediacy and
21 certainty of substantial settlement proceeds against the risks inherent in continued litigation. In
22 making a fairness determination, "[t]he most important factor is the strength of the case for plaintiffs
23 on the merits, balanced against the amount offered in settlement." *Kullar*, 168 Cal.App.4th 116, 128
24 (2008). This analysis often includes a comparison of the amount of the proposed settlement with the

26 ⁶ See, Declaration of Patrick R. Kitchen and Kelly B. Hanker in Support of Motion for Attorneys' Fees, Costs and
Service Awards.

27 ⁷ Mitzner Decl., ¶¶ 9-10

1 value of the damages potentially recoverable if successful in further litigation, appropriately
2 discounted for the risk of not prevailing. *Dunk*, 48 Cal.App.4th at 1801-1802; *Girsh v. Jepson*, 521
3 F.2d 153, 157 (3d Cir. 1975); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 617-619 (N.D. Cal. 1979).

4 In the present case, the value of the settlement substantially outweighs the risks of further
5 litigation. A \$175,000 wage and hour settlement from a Professional Employer Organization
6 (Infiniti) and an out of business hair and nail salon business constitutes substantial value. With 186
7 Class Members, the NSA provides an average settlement value of \$352.57 per cosmetologist. This
8 value is fair and reasonable given the inherent risks in continued litigation against these specific
9 Defendants.

10 **2. Risks Inherent in Continued Litigation Favor Final Approval**

11 Plaintiffs recognize the risks they would face prosecuting these claims through trial and
12 enforcing any judgment rendered by the Court. The most serious risks are (a) the substantial
13 likelihood that the Ferguson Defendants would seek bankruptcy protection or would be otherwise
14 be judgment proof, and (b)) the substantial likelihood that the Infiniti Defendants would move for
15 summary judgment based on their purported status as a PEO and not an employer responsible for
16 wage and hour policies and practices. The outcome of that motion could be dispositive of some or
17 all of Plaintiff's claims.

18 Other risks are manifest as well, including the following:

19 (i) The trial court's broad discretion to grant or deny class certification could result in
20 no recovery whatsoever for unnamed Class Members if certification is denied or if a certified class
21 is later declassified;

22 (ii) Defendants' various affirmative defenses, including those that challenge the grounds
23 for class treatment, would present significant challenges, particularly given Defendants' contention
24 that different owners and managers at different salon locations implemented different policies
25 related to the alleged violations over the course of several years;

1 (iii) Although Plaintiffs seek penalties for violations of the Labor Code under the Labor
2 Code Private Attorneys General Act, the penalties are subject to reduction if the Court finds the
3 penalties are “unjust, arbitrary and oppressive or confiscatory.”

4 (iv) The absence of timekeeping data or other written records for the Class Members’
5 off-the-clock work would make damage calculations expensive and time-consuming;

6 (v) It is inherently difficult, expensive and time consuming to prove meal and rest period
7 violations on a class wide basis. *See Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004
8 (2012); and

9 (vi) Defendant’s likely argument that Plaintiffs’ estimate of the maximum damages
10 available to the Class is vastly overstated and does not comport with the *actual* damages suffered
11 by Class Members.

12 The Settlement warrants approval because it provides immediate and substantial relief to the
13 Class Members without the risks attendant of continued litigation.

14 3. The Complexity, Expense, and Likely Duration of Continued Litigation 15 Support Approval

16 In evaluating the Settlement for fairness, the Court should weigh the benefits of settlement
17 against the expense and delay involved in achieving an equivalent or even more favorable result at
18 trial. *Young v. Katz*, 447 F.2d 431, 433 (5th Cir. 1971); *Kullar*, 168 Cal.App.4th 116, 120 (2008).
19 As California jurists have recognized, there exists “an overriding public policy favoring settlement
20 of class actions.” *Ferguson v. Lieff, Cabraser, Heimann & Bernstein*, 30 Cal.4th 1037, 1054 (2003)
21 (citing *Franklin v. Kayrpo Corp.*, 884 F.2d 1222, 1229 (9th Cir. 1989) (“public policy favor[s] the
22 compromise and settlement of disputes”)). The alternative to a class action, namely hundreds of
23 individual actions, could tax private and judicial resources for years. Given the relatively modest,
24 though not inconsequential, amount of damages individual Class Members allegedly incurred, it
25 would be uneconomical even for those with the resources to secure individual legal representation.
26 Here, this Settlement provides *all* Class Members, regardless of their means to pursue their rights in
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1 court, the opportunity for monetary recovery in a prompt and efficient manner, without the risk of
2 the Court denying class certification and Class Members potentially recovering nothing at all.

3 Class Counsels considered that even if Plaintiffs prevailed, on both class certification and
4 liability, the process could be lengthy and costly, potentially including several appeals. As with most
5 complex litigation, wage and hour class actions rarely end when the trial court enters a dispositive
6 order or final judgment. Class action defendants may seek a writ of mandate from an order granting
7 class certification. *See* Cal. Code Civ. Proc. § 904.1; *In re Cipro Cases I and II*, 121 Cal.App.4th
8 402, 409 (2004). Moreover, the losing party often takes an appeal after disposition of liability and/or
9 damages. Even a successful judicial resolution at the trial court level can be just the beginning of a
10 lengthy, expensive process, stalling payments to class members for years.⁸ This is compounded by
11 the risk of an adverse appellate ruling, which would remand the action to the trial court for further
12 litigation, possibly with negative precedent.⁹ The complexity, expense, and likely delay of continued
13 litigation further support final approval of the Settlement.

14 **4. The Parties' Discovery and Factual Investigation Support Approval**

15 “[T]he extent of discovery completed and the stage of the proceedings” are factors that courts
16 consider in determining the fairness, adequacy and reasonableness of a settlement. *Dunk*, 48
17 Cal.App.4th at 1794. As noted above, the Settlement was only sought after the Parties had a clear
18 view of the strengths and potential vulnerabilities and weaknesses of their respective cases.
19 Plaintiffs’ counsels conducted extensive pre-filing due diligence including review of publicly
20 available information and documents provided by Plaintiffs, other witnesses and Defendants. The
21 Parties thoroughly investigated and are knowledgeable of the facts to form educated assessments
22 regarding their respective positions, the validity of the other’s defenses, and the value of the case.

23 **5. The Experience and Views of Counsel Favor Final Approval**

25 ⁸ *See, e.g. Savaglio v. Wal-Mart Stores, Inc.*, Case No. C-835687 (Alameda County Super. Ct.) [Following four
26 years of litigation and a four-month jury trial, in 2005, aggrieved employees did not receive any remuneration
more than five years later.]

27 ⁹ *See, e.g., Chau v. Starbucks Corp.*, 174 Cal.App.4th 688 (2009) (appellate court reversed an \$86 million
restitution award to a certified class of hourly employees).

1 Class Counsels supports the Settlement as fair, reasonable, and adequate, and believe it in
2 the best interest of the Class as a whole.¹⁰ Class Counsels have substantial experience prosecuting
3 complex litigation and/or class action lawsuits, and have prosecuted numerous wage and hour
4 actions, many of which involved class wide wage and hour claims similar to those at issue here.¹¹
5 As discussed above, Class Counsels are familiar with the litigation, having conducted formal
6 discovery, investigation, motion practice, and negotiation on behalf of Plaintiff. The endorsement
7 by well-informed and qualified counsel of a settlement as fair, adequate, and reasonable is entitled
8 to significant weight. *Dunk*, 48 Cal.App.4th at 1802; *Ellis Naval Air Rework Facility*, 87 F.R.D. 15
9 (N.D. Cal. 1980); *Boyd*, 485 F. Supp. 610, 617 (N.D. Cal. 1979).

10 **6. The Class Members' Reaction Favors Final Approval**

11 Finally, when determining if a settlement is reasonable, a court also looks to "the reaction
12 of class members to the proposed settlement." *Dunk*, 48 Cal.App.4th at 1801; *Wershba*, 91
13 Cal.App.4th at 244-245; *Kullar*, 168 Cal.App.4th at 119. Here, Class Members' response to the
14 settlement has been favorable. No Class Member has objected to, nor opted-out of, the Settlement,
15 and all Class Members are participating in the Settlement. This positive response demonstrates that
16 the Settlement is fair, adequate, and reasonable, and is worthy of final approval.

17 **V. THE COURT-ORDERED NOTICE PROGRAM IS CONSTITUTIONALLY** 18 **SOUND AND HAS BEEN FULLY IMPLEMENTED**

19 California statutory and case law vests the Court with discretion in fashioning an appropriate
20 notice program. Cal. Civ. Code § 1781; *Cartt v. Superior Court*, 50 Cal.App.3d 960, 973-974 (1975).
21 To protect the rights of absent class members, the parties must provide the class with the best notice
22 practicable, but due process does not require actual notice to parties who cannot reasonably be
23

24 _____
25 ¹⁰ "When approving class action settlements, the court must give considerable weight to class counsel's opinions due to
26 counsel's familiarity with the litigation and its previous experience with class action lawsuits." *Alberto v. GMRI, Inc.,*
Not Rpt'd in F. Supp. 2d, 2008 WL 4891201 (E.D. Cal. 2008) (citing *Officers for Justice*, 688 F.2d at 625 and *In re*
Washington Public Power Supply System Securities Litigation, 720 F. Supp. 1379, 1392 (D. Ariz. 1989)).

27 ¹¹ See, Declaration of Patrick R. Kitchin and Kelly B. Hanker in Support of Motion for Attorneys' Fees, Costs and
Service Awards.

1 identified. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-812 (1985); *Eisen v. Carlisle &*
2 *Jacquelin*, 417 U.S. 156 (U.S. 1974); *Manual* § 21.311, n. 882 at 432.

3 The Court-approved notice program has now been fully implemented. The Settlement
4 Administrator mailed the Notice Package to the 186 member proposed settlement class on February
5 19, 2024. Of the 184 notices mailed, only one was undeliverable.¹²

6 The completion of this settlement notice process satisfies California law.

7 **VI. CONCLUSION**

8 Based upon the foregoing, Plaintiffs respectfully request that the Court grant final
9 approval of the Settlement.

10
11 Dated: April 23, 2024

KITCHIN LEGAL, APC

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13 By: _____
14 Patrick Kitchin, Esq.
15 Attorneys for Plaintiffs Ildiko O'Connor, Laura
16 Raya and Dina Shashua
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27 ¹² Mitzner Decl., ¶ 8