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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

DANIEL JACOBS, on behalf of himself, and
others similarly situated,

Plaintiff,

v.

RUSH MEDIA COMPANY, LLC, a Wisconsin
limited liability company; XLT
MANAGEMENT SERVICES, INC. an Illinois
corporation; and DOES 1-50, inclusive,

Defendants.

Case No: 20STCV32350

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

Hearing Date: May 2, 2022

Hearing Time: 10:30AM

Honorable Judge Daniel J. Buckley
Department 1

Trial Date: Not Set

Action Filed: August 25, 2020

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	THE SETTLEMENT BEFORE THE COURT.....	2
III.	GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL OF CLASS ACTION SETTLEMENTS	4
IV.	THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE.....	5
	1. The Investigation and Discovery are Sufficient to Allow Counsel and the Court to Act Intelligently	6
	2. The Settlement Was Reached Through Arm's Length Bargaining	7
	3. Class Counsel is Experienced in Similar Litigation	8
	4. There Are No Objections by The Class Members..	8
	5. The Risk, Expense, Complexity and Likely Duration of Further Litigation	9
	6. The Amount Offered in Settlement	11
V.	CONCLUSION.....	12

TABLE OF AUTHORITIES

Cases:	Page:
<i>7-Eleven Owners for Fair Fran. v. Southland Corp.</i> , 85 Cal. App. 4th 1135, 1151 (2000)	4-5
<i>Alberto v. GMRI, Inc.</i> , 252 F.R.D. 652, 666 (E.D. Cal. Jun 24, 2008).	8
<i>Amaral v. Cintas Corp.</i> , 163 Cal. App. 4th 1157, 1209 (2008).	11
<i>Carrington v. Starbucks Corp.</i> , 30 Cal. App. 5th 504, 539 (2018).	12
<i>Cellphone Termination Fee Cases</i> , 180 Cal. App. 4th 1110, 1117 (2009).	6
<i>Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794, 1801 (1996).	5-6
<i>Duran v. U.S. Bank National Assn.</i> , 59 Cal. 4th 1 (2014)	10
<i>Glass v. UBS Fin. Servs.</i> , 2007 U.S. Dist. LEXIS 8476 (N.D.Cal. January 27, 2007)	8
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011, 1026 (9th Cir. 1998)	9
<i>Huens v. Tatum</i> , 52 Cal. App. 4th 259, 265 (1997)	4
<i>In re Austrian & German Bank Holocaust Litigation</i> , 80 F. Supp. 2d 164, 175 (S.D.N.Y. 2000)	9
<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal. App. 4th 116, 128 (2008)	1,6
<i>Laskey v. Int'l Union</i> , 638 F.2d 954 (6th Cir. 1981).	9
<i>Malibu Outrigger Bd. of Governors v. Superior Court</i> , 103 Cal. App. 3d 573, 578-579 (1980)	5
<i>Munoz v. BCI Coca-Cola Bottling Co. of L. A.</i> , 186 Cal. App. 4th 399, 408 (2010)	6

1	<i>Officers for Justice v. Civil Service Com'n, etc.,</i>	
2	688 F.2d 615 (9th Cir. 1982)	5
3	<i>Stoetzner v. U.S. Steel Corp.,</i>	
4	897 F.2d 115, 118-119 (3d. Cir. 1990)	9
5	<i>Wershba v. Apple Computer, Inc.,</i>	
6	91 Cal.App.4th 224, 245-46 (2001)	5
7	Statutes, Rules and Regulations:	
8	California Labor Code §203	7
9	California Labor Code §226	6-7
10	California Labor Code §2698	3
11	Secondary Sources:	
12	Newberg & Conte, <i>Newberg on Class Actions</i> , (3d ed. 1992) §11.41, pp. 11-91	5
13		
14		
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1 **I. INTRODUCTION**

2 Plaintiff Daniel Jacobs (“Plaintiff”) and Defendants Rush Media, LLC and XLT
3 Management Services, Inc. (“Defendants”), have reached a full and final settlement of the above-
4 captioned action, which is set forth in the Stipulation of Settlement of Class Action Claims and
5 Release of Claims (“Agreement” or “Settlement”) filed herewith.¹ The Court preliminarily
6 approved the Agreement via its Preliminary Approval Order dated December 20, 2021
7 (“Preliminary Approval Order”); and pursuant to the Preliminary Approval Order the approved
8 Class Notice has been disseminated to the Class.²

9 After disseminating the Notice to the members of the Class, to date there have been no
10 objections and only one opt out, which means that 99.75% of the Class is currently participating in
11 the Settlement. (Decl. Zakay ¶9.) This is a stellar response from the Class evidencing their approval
12 of the Settlement.

13 This Settlement is an excellent result for the Class Members in light of the serious doubts as
14 to the result of the adjudication of their claims, along with further uncertainty as to whether class
15 certification could be maintained through trial. Considered as a whole, the Settlement of
16 \$330,000.00 represents almost 39% of the value of the maximum actual damages at issue.
17 Furthermore, the Settlement represents more than 11.6% of the maximum combination of damages
18 and penalties to the Class, assuming all of these amounts could be proved at trial.

19 Under *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116 (2008), this Settlement is a
20 fair and reasonable recovery of Plaintiffs’ wage and hour claims (which were subject to considerable
21 uncertainty, both as to the merits and certification). The response of the Class has been extremely
22 positive. Accordingly, Plaintiff respectfully submits that the Class Settlement should be finally
23 approved as fair, reasonable, and adequate.

24
25

¹ A copy of the Agreement is attached as Exhibit 2 to the Declaration of Shani O. Zakay (“Decl.
26 Zakay”), served and filed herewith. Capitalized terms in this Memorandum have the same meaning
as contained in the Agreement.

27 ² The “Class” is defined as “all of the current and former non-exempt employees and independent
28 contractors that worked for Defendant Rush, including those that received payroll services from
XLT Management Services, Inc., in California during the Class Period. The Class Period is defined
as the period between August 20, 2016, to July 4, 2021.

1

2 **II. THE SETTLEMENT BEFORE THE COURT**

3 Plaintiff and Defendants reached a full and final Settlement of the above-captioned action,
4 which is embodied in the Agreement filed concurrently with the Court. As consideration for this
5 Settlement, Defendant has agreed to pay the all-in, non-reversionary amount of Three Hundred and
6 Thirty Thousand Dollars (\$330,000) (“Gross Settlement Amount”). The Total Settlement Amount
7 includes all payments of the Settlement Shares to Class Members, the Class Representative Service
8 Award to Plaintiff, Settlement Administration Expenses, the PAGA Payment, and Court-approved
9 attorneys’ fees and costs. Defendants will separately pay the employer’s share of payroll taxes to
10 the qualified settlement fund, per the Agreement. (Decl. Zakay ¶13(a).)

11 The Net Settlement Amount shall equal the net amount available for Settlement Shares to
12 Class Members from the Total Settlement Amount after deducting the Court-approved amounts for
13 the Class Representatives Service Award, the Class Counsel Fees Payment, the Class Counsel
14 Litigation Expenses Payment, the PAGA Payment, and the expenses the Settlement Administration
15 Costs. The Settlement Administrator will pay a Settlement Share from the Net Settlement Amount
16 to each Class Member. The submission of a claim form is not required in order for the Participating
17 Class Member to be paid his or her Settlement Share. The Settlement Share for each Class Member
18 will be calculated as follows: 1) respective Work Shifts for each Class Member will be divided by
19 the total Work Shifts for all Class Members, resulting in the Payment Ratio for each Class Member;
20 (2) each Class Member’s Payment Ratio is then multiplied by the Net Settlement Amount to
21 calculate each Class Member’s estimated Individual Settlement Payments. The entire Net
22 Settlement Amount shall be distributed. The entire Net Settlement Fund shall be distributed. (Decl.
23 Zakay ¶13(b).)

24 Class Members were sent the Court approved Class Notice, using the procedure approved
25 by the Court, by mailing the notice packets after updating class members’ addresses using the
26 National Change of Address database and, for any notice packets returned as undeliverable, re-
27 mailing such notices to any forwarding address provided or updated address located through skip
28 tracing. Class Members were provided with the opportunity to exclude themselves (“opt out”) if

1 they did not want to participate in the Settlement. Class Members who did not “opt out” are deemed
2 Participating Class Members who are bound by the Settlement and will be mailed a settlement
3 payment. The Notice advised the Aggrieved Employees that they will receive payment from the
4 Net PAGA Payment regardless of their decision to participate in the Action. The Class Notice also
5 advised Class Members of their right to object to the Settlement. This notice process is documented
6 in the accompanying Declaration of Lluvia Islas (the Settlement Administrator). (Decl. Zakay
7 ¶3(c).)

8 If a Participating Class Member’s Settlement Share check is not cashed within 180 days
9 after its last mailing to the Participating Class Member, the funds from such uncashed checks will
10 be paid to the State of California Controller’s Office of Unclaimed Property and the Participating
11 Class Member will remain bound by the Settlement. (Decl. Zakay ¶4).

12 The Agreement provides for Class Counsel to be awarded a sum not to exceed 1/3 of the
13 Gross Settlement Amount as their Class Counsel Fees Payment. Class Counsel will apply
14 separately for an award of litigation expenses incurred in the prosecution and settlement of the
15 Action in an amount not exceeding \$15,000. **In support of this request, Class Counsel is**
16 **providing evidentiary support, including lodestar, in the declarations submitted concurrently**
17 **herewith.** The Agreement provides for payment of Class Representative Service Payment of no
18 more than \$10,000 for Plaintiff, or such lesser amount as may be approved by the Court in
19 compensation for his services. Defendants do not oppose the requested Class Counsel Fees
20 Payment, Litigation Expenses, Settlement Administration Costs, or Class Representative Service
21 Payment. (Decl. Zakay ¶5).

22 The Parties allocated \$20,000 from the Gross Settlement Amount for settlement of civil
23 penalties under PAGA, Labor Code Section 2698 et seq. Pursuant to the requirements of Labor
24 Code §2699(i) the PAGA Payment shall be allocated \$15,000 to the LWDA (“LWDA Payment” or
25 the “PAGA Payment”) as the LWDA’s share of the settlement of civil penalties and \$5,000 to the
26 Net Settlement Amount for distribution to the Aggrieved Employees (“Net PAGA Amount”).
27 (Decl. Zakay ¶6).

1 The Settlement was reached through arm's length negotiations. On May 4, 2021, the parties
2 participated in a mediation before Hon. William C. Pate (Ret.) a respected jurist and mediator of
3 wage and hour class actions. Prior to the mediation, the Parties prepared by exchanging data and
4 records, calculating damages, and submitting mediation briefs to the Mediator. Defendants provided
5 Class Counsel with necessary records and information for the members of the Class. Defendants
6 produced a sample consisting of pay records and time records for the Class Members for the entire
7 Class Period. Defendants also produced Defendants' relevant compensation policies and
8 timekeeping policies. Plaintiff analyzed the data with the help of an expert and prepared and
9 submitted a mediation brief to Judge Pate. The Parties were unable to reach an agreement to settle
10 the Action, at which point Judge West made a mediator's proposal, which was accepted by the
11 Parties. The Parties documented the agreement in the form of a Memorandum of Understanding.
12 The Parties then prepared the full Agreement which was signed by the Parties and received
13 preliminary approval from the Court by Order dated December 20, 2021. (Decl. Zakay ¶7).

14 The Settlement is fair, adequate and reasonable to the Class and should be finally approved
15 for the same reasons the Court granted preliminary approval to the Settlement, finding that it is fair,
16 adequate, and reasonable as to all potential Class Members. In sum, this Settlement valued at
17 \$330,000 is an excellent result for the Class. This result is particularly favorable in light of the fact
18 that liability in this case was far from certain in light of the defenses asserted by Defendants. There
19 have been no objections and only one opt-out. Given the complexities of this case, the defenses
20 asserted, the uncertainty of class certification, along with the uncertainties of proof at trial and
21 appeal, the proposed Settlement is fair, reasonable and adequate, and should be finally approved.
22 (Decl. Zakay ¶8).

23 III. GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND 24 APPROVAL OF CLASS ACTION SETTLEMENTS

25 Settlements of disputed claims are favored by the courts. *Huens v. Tatum*, 52 Cal. App. 4th
26 259, 265 (1997). In evaluating settlements, the courts have long recognized that compromise is
27 particularly appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners*
28 *for Fair Fran. v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) (“[V]oluntary conciliation

1 and settlement are the preferred means of dispute resolution. This is especially true in complex class
2 action litigation.”)

3 “[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a
4 class action requires court approval.” *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996)
5 (citing *Malibu Outrigger Bd. of Governors v. Superior Court*, 103 Cal. App. 3d 573, 578-579
6 (1980).) The court must decide whether the proposed settlement falls within the range of reasonable
7 settlements, taking into account that settlements are compromises between the parties reflecting
8 subjective, unquantifiable judgments concerning the risks and possible outcomes of litigation. See
9 *Wershba v. Apple Computer*, 91 Cal. App. 4th 224, 246 (2001) (“The proposed settlement is not to
10 be judged against a hypothetical or speculative measure of what might have been achieved had
11 plaintiffs prevailed at trial.”) In *Wershba*, appellants argued that the settlement was too low given
12 the “clear” liability, however, the Court rejected this argument and held that “the merits of the
13 underlying class claims are not a basis for upsetting the settlement of a class action.” *Id.*; see also
14 *7-Eleven, supra*, at 1150.

15 Courts have repeatedly emphasized that there is a strong initial presumption that the
16 compromise is fair and reasonable. *Wershba*, 91 Cal. App. 4th at 245. Courts should not substitute
17 their judgment for that of the parties who negotiated the settlement. *Id.* at 246. The presumption
18 of fairness exists where: (1) investigation and discovery are sufficient to allow counsel and the court
19 to act intelligently; (2) the settlement is reached through arm’s-length bargaining; (3) counsel is
20 experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk*, 48 Cal. App.
21 4th at 1801, citing Newberg & Conte, *Newberg on Class Actions*, (3d ed. 1992) §11.41, pp. 11-91.
22 Here, all of these factors support a presumption of fairness.

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

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

1 The trial court has broad discretion to determine whether the settlement is fair. *Cellphone*
2 *Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117 (2009). “The well-recognized factors that
3 the trial court should consider in evaluating the reasonableness of a class action settlement
4 agreement include ‘the strength of plaintiffs’ case, the risk, expense, complexity and likely duration
5 of further litigation, the risk of maintaining class action status through trial, the amount offered in
6 settlement, the extent of discovery completed and the stage of the proceedings, the experience and
7 views of counsel, the presence of a governmental participant, and the reaction of the class members
8 to the proposed settlement.’” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008)
9 (internal citations omitted); see also *Munoz v. BCI Coca-Cola Bottling Co. of L.A.*, 186 Cal. App.
10 4th 399, 408 (2010).

11 The list of factors is not exhaustive and should be tailored to each case. *Dunk, supra*, at
12 1801. Due regard should be given to what is otherwise a private consensual agreement between the
13 parties. *Id.* The inquiry “must be limited to the extent necessary to reach a reasoned judgment that
14 the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
15 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”
16 *Id.* “Ultimately, the [trial] court’s determination is nothing more than ‘an amalgam of delicate
17 balancing, gross approximations and rough justice.’ [Citation omitted.]” *Id.*

18 These factors are analyzed seriatim below, and all support final approval of the Settlement
19 before this Court, consistent with this Court’s Preliminary Approval Order.

20 **1. The Investigation and Discovery Are Sufficient to Allow Counsel and the Court to**
21 **Act Intelligently**

22 On August 20, 2020, Plaintiff filed a Notice of Violations with the LWDA and served the
23 same on Defendants. The Notice to the LWDA included a proposed Complaint which Plaintiff
24 planned on filing with the Court, which asserted the Defendant: (1) Violated California Business
25 and Professions Code § 17200 *et seq.*; (2) Failed to pay minimum wages in violation of California
26 Labor Code §§ 1194, 1197, and 1997.1; (3) Failed to pay overtime wages in violation of California
27 Labor Code §§ 510, *et seq.*; (4) Failed to provide meal periods in violation of California Labor Code
28 §§ 226.7 & 512, and IWC Wage Order; (5) Failed to provide rest periods in violation of California

1 Labor Code §§ 226.7 & 512, and IWC Wage Order; (6) Failed to provide accurate and complete
2 itemized wage statements in violation of California Labor Code §226; (7) Failed to provide wages
3 when due in violation of California Labor Code §§ 201, 202, and 203; and (8) Failed to reimburse
4 employees for required expenses in violation of California Labor Code §2802. (Decl. Zakay at
5 ¶11(a)).

6 On August 25, 2020, Plaintiff filed a class action Complaint against Defendants in the
7 Superior Court of the State of California, County of Los Angeles. Plaintiff alleges that Defendants
8 violated and continue to violate the California Labor Code protections applicable to California
9 employees including because Defendants have misclassified some California employees as
10 independent contractors and otherwise underpaid wages, including overtime wages, failed to
11 provide meal and rest breaks, accurate wage statements and final pay. On November 2, 2020,
12 Plaintiff filed a First Amended Complaint adding a claim for penalties pursuant to PAGA. (Decl.
13 Zakay at ¶11(a)).

14 Class Counsel has conducted a thorough investigation into the facts of the class action. Class
15 Counsel has diligently evaluated the Class Members' claims against Defendants. Class Counsel
16 engaged in informal discovery in preparation for the mediation, and received significant responses
17 and documents to the discovery requests. Defendants produced a large sample consisting of pay
18 records and time records for the Class Members for the entire Class Period. Defendants also
19 produced relevant policies, including compensation policies and timekeeping policies. Class
20 Counsel conducted extensive review of time records and data with the help of an expert. Based on
21 the foregoing data and their own independent investigation, evaluation and experience, Class
22 Counsel believe that the Settlement is fair, reasonable, and adequate and is in the best interest of the
23 Class in light of all known facts and circumstances, including the risk of significant delay, the
24 defenses asserted by Defendants, and potential appellate issues.

25 **2. The Settlement Was Reached Through Arm's-Length Bargaining**

26 This Settlement was the result of arm's-length negotiations as well as informal settlement
27 conferences between the Parties through their respective attorneys. After comprehensive legal and
28 factual analysis, Class Counsel possessed sufficient information for intelligent evaluation of the

1 case for purposes of settlement. Prior to the initiation of settlement discussions, Class Counsel
2 reviewed and outlined the case based upon the information for the Class, and determined the
3 conditions of settlement which would be fair and reasonable to the Class with the assistance of an
4 expert. (Zakay Decl. ¶12(a)).

5 The fact that the Settlement was negotiated with the assistance of a mediator supports
6 approval. *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 666 (E.D. Cal. Jun 24, 2008); *Glass v. UBS Fin.*
7 *Servs.*, 2007 U.S. Dist. LEXIS 8476; 15 Wage & Hour Cas. 2d (BNA) 1330, at *15 (N.D. Cal.
8 2007) (“The settlement was negotiated and approved by experienced counsel on both sides of the
9 litigation, with the assistance of a well-respected mediator with substantial experience in
10 employment litigation[, and] this factor supports approval of the settlement.”)

11 **3. Class Counsel is Experienced in Similar Litigation**

12 As set forth in the declarations submitted in support of this motion, Class Counsel have
13 extensive experience in wage and hour matters and have previously been appointed as Class
14 Counsel by California courts. Class Counsel support approval of the Settlement based upon their
15 experience in wage and hour litigation.

16 **4. There Are No Objections by the Class Members**

17 The reaction of the Class unequivocally supports approval of the Settlement. On January
18 14, 2022, the Settlement Administrator Court-approved Class Notice to the Class Members, which
19 provided each Class Member with the terms of the Settlement, including notice of the claims at
20 issue and the financial terms of the Settlement, including the Class Counsel Fee Payment, Litigation
21 Expenses, and Class Representative Service Award being sought, how individual Settlement Shares
22 would be calculated, and the specific, estimated payment amount to that individual. In
23 disseminating the Class Notice, the Settlement Administrator followed the notice procedures
24 authorized by the Court in its Preliminary Approval Order. Significantly, there have been no
25 objections and only one opt-out. (See Declaration of Lluvia Islas at ¶¶ 11-12.) As a result, almost
26 the entire Class (99.75%) has elected to participate in the Settlement and will be sent a settlement
27 check. The final administration results are documented in the accompanying Declaration of the
28 Settlement Administrator Lluvia Islas.

1 The absence of any objector strongly supports the fairness, reasonableness and adequacy of
2 the Settlement. See *In re Austrian & German Bank Holocaust Litigation*, 80 F. Supp. 2d 164, 175
3 (S.D.N.Y. 2000) (“If only a small number of objections are received, that fact can be viewed as
4 indicative of the adequacy of the settlement.”); *Stoetznner v. U.S. Steel Corp.*, 897 F.2d 115, 118-
5 119 (3d. Cir. 1990) (29 objections out of 281 member class “strongly favors settlement”); *Laskey*
6 *v. Int’l Union*, 638 F.2d 954 (6th Cir. 1981) (The fact that 7 out of 109 class members objected to
7 the proposed settlement should be considered when determining fairness of settlement). Here,
8 where there are no objections, the approval of the Class is evident.

9 **5. The Risk, Expense, Complexity and Likely Duration of Further Litigation**

10 The risks and complexity of the alleged claims are discussed in detail in the Declaration of
11 Zakay at ¶ 13. Where both sides face significant uncertainty, the attendant risks favor settlement.
12 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, several defenses asserted by
13 Defendants presented serious threats to the claims of the Plaintiff and other Class Members. In
14 order to recover any penalties, Plaintiff would be required at trial to prove each of the underlying
15 Labor Code violations. Specifically, Plaintiff would need to prove as to individuals who worked
16 for Defendants that he or she was misclassified as an independent contractor, and that he or she was
17 not properly compensated for minimum wages, meal break wages, rest break wages, expenses, and
18 overtime wages. To do so, Plaintiff would require proof of Labor Code violations to each of the
19 above. (Decl. Zakay at ¶13).

20 Defendants maintain that Plaintiff and other Class Members were properly classified as
21 independent contractors and were properly compensated, and that Defendants did not violate the
22 Labor Code as to any of them. Given Defendants’ potential defenses to the Labor Code violations,
23 and the risks and costs of continued litigation, Plaintiff and Class Counsel believe that the
24 Settlement Amount is fair and reasonable. While Plaintiff believes that these defenses, and others,
25 could be overcome, Defendants maintain these defenses have merit and therefore present a serious
26 risk to recovery for the Class. (Decl. Zakay at ¶13).

27 Further supporting the fairness and reasonableness of the settlement is Defendants’ financial
28 condition. Defendants provide video, field production and post-production packaging services for

1 televised sporting events (Rush Media, LLC) and related payroll services (XLT Management
2 Services, Inc.). The production business has suffered significantly as a result of the effects of the
3 COVID-19 virus and the Governor's order prohibiting large events and gatherings, which resulted
4 in the cancellation of many sporting events. In fact, as a result of the pandemic, many of the
5 Defendants' operations were largely shut down for more than a year. Considering the resulting
6 financial hardship, the settlement provides great value for the Class Members, while also allowing
7 Defendants to continue in business. Further, during the time that many of Defendants' operations
8 were mandated closed by state and local authorities during the COVID-19 pandemic, the alleged
9 violations could not have occurred. (Decl. Zakay at ¶13).

10 There was also a significant risk that, if the Action was not settled, Plaintiff would be unable
11 to obtain class certification and thereby not recover on behalf of any Class Member other than
12 themselves. Defendants argued that the individual experience of each Class Member varied with
13 respect to the alleged claims. While other cases have approved class certification of wage and hour
14 claims, class certification in this action would have been hotly disputed and was by no means a
15 foregone conclusion. Finally, even if class certification was successful, as demonstrated by the
16 California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014),
17 there are significant hurdles to overcome for a class-wide recovery even where the class has been
18 certified. (Decl. Zakay at ¶13).

19 Plaintiff and Class Counsel recognize the expense and length of continuing to litigate and
20 trying the Action against Defendants through possible appeals which even if successful could take
21 several years. Class Counsel have also taken into account the uncertain outcome and risk of
22 litigation, especially in complex actions such as this Action. Class Counsel are also mindful of and
23 recognize the inherent problems of proof under, and alleged defenses to, the claims asserted in the
24 Action. As demonstrated by the decision in *Duran*, the complexities and duration of further
25 litigation cannot be overstated. There is little doubt that Defendants would post a bond and appeal
26 in the event of an adverse judgment. A post-judgment appeal by Defendants would have required
27 many more years to resolve, assuming the judgment was affirmed. If the judgment was not affirmed
28 in total, then the case could have dragged on for years after the appeal. The benefits of a guaranteed

1 recovery today outweigh an uncertain result three or more years in the future. Moreover, post-trial
2 motions and appeals would have been inevitable. Costs would have mounted and recovery would
3 have been delayed if not denied, thereby reducing the benefits of an ultimate victory. Plaintiff and
4 Class Counsel believe that the Settlement confers substantial benefits upon the Class. Based upon
5 their evaluation, Plaintiff and Class Counsel have determined that the Settlement set forth in the
6 Agreement is in the best interest of the Class Members. (Decl. Zakay ¶13).

7 In sum, the Settlement is a fair and reasonable result, and provides the Class with a
8 significant recovery, particularly when viewed in light of the fact that Defendants asserted serious
9 and substantial defenses both to liability and to class certification. Given the complexities of this
10 case, the defenses, along with the uncertainties of proof and appeal, the proposed Settlement is fair,
11 reasonable and adequate, and should be finally approved. (Decl. Zakay ¶13).

12 **6. The Amount Offered in Settlement**

13 The Settlement in this case is fair, reasonable and adequate. As detailed during preliminary
14 approval, the Total Settlement Amount compares favorably to the value of the claims. Class
15 Members will receive immediate and certain payments of considerable amounts under the
16 Settlement. Currently, the overall maximum and average Participating Class Member allocations
17 are estimated to be \$4,607.70 and \$404.94 respectively. Additionally, the overall maximum and
18 average PAGA Member allocations are estimated to be \$4,607.70 and \$404.94 respectively. (Decl.
19 Islas at ¶ 14).

20 Plaintiff estimates that Defendants were subject to maximum liability for damages in the
21 amount of \$847,986 consisting of \$220,750 for unreimbursed business expenses, \$238,760 for
22 unpaid wages, and \$388,476 for meal and rest break periods. In addition, Plaintiff calculated that
23 Defendants could be liable for \$1,907,914 for waiting time penalties and \$83,150 for wage
24 statement penalties. Finally, Plaintiff's expert calculated that Defendant could be liable for PAGA
25 penalties in an amount of \$1,266,650.³ Consequently, the Settlement of approximately \$330,000

26 ³ Plaintiff recognizes that the PAGA penalties claim is also subject to various defenses by
27 Defendant, including that Class Members may not be able to recover subsequent penalties until, at
28 a minimum, Plaintiff provided PAGA notice. *See Amaral v. Cintas Corp.*, 163 Cal. App. 4th 1157,
1209 (2008) ("Until the employer has been notified that it is violating a Labor Code provision
(whether or not the commissioner or court chooses to impose penalties), the employer cannot be

1 represents almost 39% of the value of the maximum actual *damages* at issue. Furthermore, the
2 Settlement represents almost 11.6% of the maximum combination of damages and penalties to the
3 Class, assuming all of these amounts could be proved at trial. (Decl. Zakay ¶15)).

4 **V. CONCLUSION**

5 Plaintiff respectfully submits that the proposed Settlement satisfies the standard of fairness
6 established under California law and should therefore be finally approved as fair, reasonable and
7 adequate and request entry of the Final Approval Order and Judgment.

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9 DATED: April 7, 2022

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11 **ZAKAY LAW GROUP, APLC**

12 By: 
13 Shani O. Zakay
14 Attorney for Plaintiff
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26 presumed to be aware that its continuing underpayment of employees is a “violation” subject to
27 penalties.”). In addition, Plaintiff recognizes that PAGA claims bear some risk. *See Carrington v.*
28 *Starbucks Corp.*, 30 Cal. App. 5th 504 (2018). In *Carrington*, while the plaintiff prevailed on his
PAGA claim at trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing
the employer's good faith attempt at complying with the law. *Id.* at 517. Upon review, the Court of
Appeal found such reduction to be proper. *Id.* at 539. Again, the *Carrington* decision was after
Plaintiff actually prevailed at trial, and even then, the PAGA penalties were reduced by 90%.