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KALVYN ESCOBAR, individually and on behalf
of all current and former similarly situated
employees in the State of California,

Plaintiff,

v.

PRIME FINANCE CONSULTING, INC., a
California Corporation; HANIEH JODAT, an
individual; SHAHIN JOUDAT, an individual, and
DOES 1 to 50, inclusive,

Defendants.

CASE NO.: 30-2020-01134584-CU-OE-CXC

ASSIGNED FOR ALL PURPOSES TO: HON.
RANDALL J. SHERMAN

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

Date: August 6, 2021
Time: 10:00 a.m.
Courtroom: CX-105

Complaint Filed: February 26, 2020
FAC Filed: June 18, 2020

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I. INTRODUCTION

Plaintiff Kalvyn Escobar (“Plaintiff” or “Class Representative”), on behalf of himself and all others similarly situated, and defendants Prime Finance Consulting (“PFC”), Hanieh Jodat¹ (“Jodat”), and Shahin Joudat² (“Joudat”) (collectively “Defendants”), (Defendants and Plaintiff are collectively referred to as the “Parties”), submit this memorandum in support of their motion for final approval of the proposed settlement³ of a wage and hour class action lawsuit alleging violations of the California Labor Code, California Private Attorneys General Act, the California Unfair Competition Law (Cal. Bus. & Prof. Code § 17200, *et seq.*), and California Industrial Welfare Commission Wage Order.

The settlement agreement contains the following material terms:

Defendants will make a non-revisionary settlement payment in the amount of One Hundred Ninety Thousand Dollars (\$190,000.00) to resolve all claims, fees and costs relating to the Settlement. The Gross Settlement Amount will be allocated as follows: (1) forty (40%) or Seventy-Six Thousand Dollars (\$76,000.00) to attorneys' fees to Class Counsel, and Class Counsel's reasonable litigation costs in the amount of \$4,753.14; (2) Ten-Thousand Dollars (\$10,000.00) as the Enhancement Award payment to Plaintiff, (3) Three-Thousand \$3,000.00 in reasonable costs incurred by the Settlement Administrator to administer the Settlement; (4) Fifteen-Thousand Dollars \$15,000.00 as payment of PAGA penalties, of which 75% or \$11,250.00 will be paid to the Labor Workforce Development Agency (“LWDA”) of the State of California; (5) all Employer Taxes due on the Net Settlement Amount(s) to be paid to the Participating Class Members; and (6) the Net Settlement Amount, including Net Settlement Payments to Participating Class Members. *See*, Mirzayan Decl., ¶2, **Exhibit “1”**.

On April 9, 2021, this Court granted preliminary approval of the proposed settlement. Mirzayan Decl., ¶3, **Exhibit “2”**. The Notice Packet to class members approved by the Court on April 9, 2021 was implemented successfully. (*See generally*, Mitzner Decl.). By this motion, Plaintiff requests: 1) final approval of the settlement; 2) that the Court retain continuing jurisdiction over the enforcement and implementation of the settlement; and 3) enter final judgment as between the Parties under Cal. Rules of

¹ Chief Financial Officer and Director.

² Owner and the Chief Executive Officer.

³ The terms of the proposed settlement are set forth in the concurrently filed Stipulation for Class Action Settlement (“Agreement”) attached as **Exhibit 1** to the Declaration of Natalie Mirzayan. Capitalized terms in this Memorandum have the same meaning as in the Agreement.

1 Court, rule 3.769(h). Final approval is warranted because the settlement is fair, adequate, and reasonable,
2 and satisfies all of the criteria for approval under California law. *See Kullar v. Foot Locker Retail, Inc.*
3 (2008) 168 Cal.App.4th 22 116, 129-30; *Dunk v. Ford Motor Company* (1996) 48 Cal.App.4th 1794,
4 1801.

5 During the preliminary approval, the Parties provided the Court with a strong basis to consider the
6 fairness of the settlement. Now that the class has received notice, their overwhelmingly positive response
7 confirms the Court’s preliminary finding that the settlement is fair, adequate, and reasonable, and should
8 be finally approved.

9 **II. FACTUAL BACKGROUND**

10 **A. Plaintiff’s Complaint**

11 On February 26, 2020, Plaintiff filed a Class Action Complaint against Defendants. Plaintiff’s
12 Complaint asserts alleges 17 causes of action against all Defendants for: (1) Misclassification As
13 Independent Contractor (Violation Of California Labor Code §§ 2750.3, 226.8); Failure To Pay All Wages
14 (Violation Of California Labor Code §§ 510, 1194, 1198; IWC Wage Order No.4); Failure To Provide
15 Meal Periods Or Compensation In Lieu Thereof (Violation Of IWC Wage Order 4-2001, Cal. Lab. Code §§
16 226.7, 512); Failure To Authorize And Permit Rest Breaks (Violation Of IWC Wage Order 4-2001, Cal.
17 Lab. Code § 226.7); Failure To Indemnify For Expenditures Incurred In Discharge Of Duties (Cal. Lab.
18 Code §§ 450, 2802, 2804); Unlawful Collection Or Receipt Of Wages Due (Violation Of California Labor
19 Code §§ 221, 224, 225); Failure To Provide Paid Sick Days (Violation Of California Labor Code §§ 245.5
20 -249); Failure To Maintain Records In Violation Of (Violation Of California Labor Code §§ 558, 1174,
21 1174.5, 274.5(A)); Waiting Time Penalties (Violation Of California Labor Code §§ 201, 202, 203); Failure
22 To Pay Minimum Wage (Violation Of California Labor Code §§ 1197, 1194, 1194.2, 1197.1); Illegal
23 Terms Of Employment (Violation Of California Labor Code §432.5); Failure To Comply With Wage
24 Theft Prevention Act (Violation Of California Labor Code § 2810.5); Failure To Issue Accurate Itemized
25 Wage Statements (Violation Of California Labor Code § 226(A)); Conversion; Violation Of Business &
26 Professions Code §17200; Injunctive Relief. (Mirzayan Decl. ¶ 4.) The initial Class Action Complaint
27 and the FAC will be collectively referred to as the “Action” or “Litigation.”
28

1 **B. The Parties Have Engaged In Extensive Discovery And Litigation**

2 During the litigation of this Action, the Parties engaged in sufficient discovery necessary for a
3 complete and thorough evaluation of Plaintiff’s claims. The Parties have engaged in written discovery
4 and informal discovery. Plaintiff propounded Requests for Production of Documents, Special
5 Interrogatories, and received responses from Defendants. Defendants provided responses to the Special
6 Interrogatories regarding the operating procedures applicable to the claims in this action, and job
7 descriptions for the positions in the Class. Defendants agreed to supplement their responses to written
8 discovery, and the Parties engaged in good faith meet and confer efforts to resolve discovery disputes.
9 Ultimately, Defendants produced available records for Plaintiff and that of the putative class. Plaintiff
10 retained an economic expert and analyzed these records. (Mirzayan Decl. ¶ 5.)

11 A court must “receive and consider enough information about the nature and magnitude of the
12 claims being settled, as well as the impediments to recovery to make an independent assessment of the
13 reasonableness of the terms to which the Parties have agreed.” *Kullar*, 168 Cal.App.4th at 133. Even so,
14 “[i]n the context of settlement agreements, the test is not the maximum amount plaintiffs might have
15 obtained at trial on the complaint, but rather whether the settlement agreement is reasonable under the
16 circumstances.” *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 230, 250 (citation omitted).

17 Here, the settlement obtained is an excellent result for the Class given the claims asserted and the
18 risks of further litigation. The central goal of the case was to adequately compensate Plaintiff and members
19 of the Settlement Class for all violations that were alleged in this class action. Plaintiff successfully
20 negotiated the settlement with that goal in mind. Therefore, and for the reasons articulated at preliminary
21 approval, counsel believes the recovery “represents a reasonable compromise, given the magnitude and
22 apparent merit of the claims being released, discounted by the risks and expenses of attempting to
23 establish and collect on those claims by pursuing the litigation.” *Kullar*, 168 Cal.App.4th at 133.

24 Put differently, continued litigation in the face of such uncertainty is too great a risk for the class
25 compared to a settlement that represents a guaranteed benefit to the class members. Where both
26 sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v. Chrysler Corporation*
27 (9th Cir. 1988) 150 F.3d 1011, 1027. Against this backdrop, the settlement is fair to the putative class.
28

C. Settlement Negotiations

In this case, the settlement was reached after factual and legal research, discovery, and preparation of damage analysis for the putative class. Plaintiff and Defendants undertook extensive efforts negotiating a good faith settlement. Counsel for the respective Parties engaged in extensive discussions about the strengths and weaknesses of the claims and defenses. Additionally, Defendants' counsel informed Class Counsel of Defendants' financial hardship, the closure of their business (Prime Finance Consulting, Inc.), and Joudat's intent to file for bankruptcy. The Parties concluded there was significant benefit associated with settling the Litigation. Specifically, the Parties concluded, after taking into account the sharply disputed factual and legal issues involved in this Litigation, the substantial cost and risks of further prosecuting this matter, and the substantial benefits to be received pursuant to the compromise and settlement of the Litigation as set forth in the Settlement Agreement, that settlement on the terms set forth herein is in the best interest of the proposed Class, and is fair and reasonable. Through a lengthy, arms-length, non-collusive negotiations, the Parties were able to reach an agreement to settle. In short, this Settlement was the product of extensive arm's length discussions, and represents a compromise and settlement of disputed claims. (Mirzayan Decl. ¶ 6.)

Therefore, the settlement that has been reached, subject to this Court's final approval, is the product of tremendous effort, and expense by the parties and their counsel. The settlement amount is, of course, a compromise figure. However, counsel for Plaintiff and Defendants are satisfied that this figure is reasonable in light of the risks and expense of continued litigation.

III. THE PRELIMINARY APPROVED SETTLEMENT

A. The Settlement Class

The Court's preliminary approval order defines the settlement class as:

"All current and former employees, who were employed by Defendants in the State of California between February 26, 2016 through the Preliminary Approval in the position of Student Loan Advisors, Student Loan Processors, or similar positions."

Mirzayan Decl., ¶ 7, **Exhibit "2"**, Preliminary Approval Order, ¶ 3.

B. Benefits Under the Settlement

Class Counsel obtained a non-reversionary settlement of One Hundred and Ninety Thousand Dollars \$190,000.00. Class Counsel considers this to be an excellent settlement for class members, when

1 taking into account all issues and risks related to liability and class certification, and also considering the
2 case law regarding fair, reasonable, and adequate settlements. Mirzayan Decl., ¶ 8. *Rebney v. Wells Fargo*
3 *Bank* (1990) 220 Cal.App.3d 1117, 111139 ["Compromise is inherent and necessary in the settlement
4 process... even if the relief afforded by the proposed settlement is substantially narrower than it would be
5 if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest
6 may indeed be served by a voluntary settlement in which each side gives ground in the interest in avoiding
7 litigation."]; *Officers for Justice v. Civil Service Comm'n* (9th 1982) 688 F.2d 615,628 ["It is well-
8 settled law that a cash settlement amounting to only a fraction of the potential recovery does not. .. render
9 the settlement inadequate or unfair."].

10 **C. Preliminary Approval and Notice to Class**

11 In its preliminary approval Order, the Court appointed Phoenix Class Action Settlement
12 Administration Solutions. ("PSA") as the Settlement Administrator. Mirzayan Decl., ¶ 9, **Exhibit "2"**,
13 ¶12. Duties performed to-date and to be performed after Final Approval of the Settlement is granted,
14 include: (i) preparing, printing, and mailing the *Notice of Class Action Settlement* and *Request for*
15 *Exclusion Form* (herein referred to collectively as the "Notice Packet"); (ii) responding to inquiries from
16 Class Members; (iii) determining the validity of opt-outs; (iv) calculating the Net Settlement Amount and
17 the Individual Settlement payments; (v) issuing the Individual Settlement Payment checks and distributing
18 them to Participating Class Members; (vi) issuing the payment to Class Counsel for attorneys' fees and
19 costs, the Enhancement check to Named Plaintiff, and the employer/employee payroll taxes to the
20 appropriate taxing authorities; and (vii) such other tasks as set forth in the Agreement or as the Parties
21 mutually agree or as the Court orders. Mitzner Decl., ¶ 2.

22 The Court approved the form and manner of the Notice Packet to the Class Members. Mirzayan
23 Decl. ¶10, **Exhibit "3"**, ¶ 14. On April 22, 2021, PSA received a data file from Defense Counsel
24 containing the first and last names, last known mailing addresses, Social Security numbers, telephone
25 numbers, employment dates, and number of weeks worked for each Class Member. Mitzner Decl., ¶ 3.
26 The class list contained thirty-two (32) Class Members. The final class size did not trigger the escalator
27 clause. Mitzner Decl., ¶ 4.
28

On May 6, 2021, PSA conducted a National Change of Address (NCOA) search in an attempt to update the class list of addresses as accurately as possible. A search of this database provides updated addresses for any individual who has moved in the previous four (4) years and notified the U.S. Postal Service of their change of address. Mitzner Decl., ¶ 5. On May 6, 2021, PSA mailed the Notice Packet via U.S. first class mail to all thirty-two (32) Class Members on the Class List. Mitzner Decl., ¶ 6, **Exhibit A**. One (1) Notice Packet was returned to PSA. The returned Notice Packet was returned without a forwarding address. PSA attempted to locate a current mailing address using TransUnion TLOxp, one of the most comprehensive address databases available for skip tracing. One (1) updated address was obtained and the Notice Packet was promptly re-mailed to those Class Members via first class mail. No Notice Packets are considered undeliverable. Mitzner Decl., ¶¶ 7-8.

PSA has received a total of **zero (0) Requests for Exclusion** (i.e., “Opt-Outs”). The deadline for Class Members to submit an “Opt-Out” was June 21, 2021. PSA has received **zero (0) Objections** to the Settlement. The deadline for Class Members to submit an “Objection” to the Settlement was June 21, 2021. PSA received zero (0) disputes from Class Members. Mitzner Decl., ¶¶ 9-10.

1. Zero Of The Class Members Opted-Out, And Zero Written Objections were Received.

PSA complied with the notice procedure approved by this Court in its Preliminary Approval Order. The Class Notice advised Class Members of applicable deadlines and other events, including the Final Approval Hearing, and how Class Members could obtain additional information. The Notice Packet was pre-printed with the name and address of the Class Member, number of days worked used to calculate his/her estimated settlement share, and instructions for challenging the number of days worked. As of this date, PSA has not received any dispute regarding a Member’s Qualifying Workweeks. Mitzner Decl., ¶ 11.

Class Members who wanted to request exclusion were required to submit a written Request for Exclusion From Settlement and Exclusion From Individual Settlement Payment included in the Notice Packet, Mitzner Decl., **Exhibit “A”**, stating (a) the full name, address, telephone number and last four digits of the Social Security Number of the Class Member requesting exclusion; (b) be signed by the Class Member; and (c) be properly and timely mailed to the Settlement Administrator prior June 21, 2021 (i.e.

forty-five (45) days after the date the Settlement Administrator initially mailed the Notice to the Settlement Class members). Mirzayan Decl., ¶ 11.

As of this date, there are Thirty-Two (32) Participating Class Members who will be paid their portion of the Net Settlement Amount. Mitzner Decl., ¶ 12.

Likewise, Class Members who wished to object to the fairness, reasonableness, or adequacy of the Settlement and who did not opt out of the class, were able to do so either in writing or by appearing at the Final Approval hearing. The Notice provided that to object in writing, a Class Member or his/her attorney must submit the written objection to the Settlement Administrator by mail postmarked on or before June 21, 2021, stating the basis of the objection, and provide any papers or briefs in support of his/her position. Class Members were also informed that they could object by appearing at the Final Approval Hearing to orally object or otherwise offer comments. Mirzayan Decl., ¶ 12.

As of this date, PSA has not received any written objections and no Class Member stated his or her intent to appear at the Final Approval Hearing. The deadline to file a written objection to the Settlement was June 21, 2021. Mitzner Decl., ¶¶ 9-11.

The Notice further provided that all written objections must be signed and should contain Class Member's address, telephone number, the name of the case, the basis of the objection, and verify the Class Member's membership in the Settlement Class or by appearing at the Final Approval Hearing. The Notice provided that a Class Member is not required to appear at the Final Approval Hearing in order for the Court to consider his/her objection if written objections to the Settlement Administrator was submitted. Additionally, the Notice provided that whether or not a Class Member submits any written objections to the Settlement Administrator, if he/she wish to be heard at the Final Approval Hearing to object, a Class Member may appear, personally or through an attorney (retained at their own expense), appear to present the Class Member's objection directly to the Court. Mirzayan Decl., ¶ 13. PSA; however, received zero (0) objections. Mitzner Decl., ¶ 10.

Class Counsel received a number of phone calls from Settlement Class Members, asking questions about how to participate, to other questions. As of this date, all of these questions had been resolved, and none of these Class Members expressed an interest in objecting to the settlement. Mirzayan Decl., ¶ 14.

1 **2. Notice of Final Judgment**

2 California Rules of Court, Rule 3.771(b) provides that, “[n]otice of the judgment must be given
3 to the class in the manner specified by the court” (Cal. Rules of Court, Rule 3.771(b).) Class Members
4 will be given the requisite notice that the Court finally approved the proposed settlement of this Action,
5 provided that the Court actually does so. Any Class Member who contacts Class Counsel and/or PSA
6 will also be given this notice. The toll-free telephone number included in the Class Notice will remain
7 in operation throughout the settlement process and for 180 days from the date the Court approves the
8 settlement to provide notice of the final judgment to any Class Member inquiring about the action.
9 (Mirzayan Decl., ¶ 15; Mitzner Decl., ¶ 15.)
10

11 **IV. THE COURT SHOULD GRANT FINAL SETTLEMENT APPROVAL**

12 **A. The Legal Standard for Final Approval**

13 Settlement of a class action requires court approval. Cal. Rules of Court, rule 3.769. To warrant
14 final approval, a class settlement must be fair, adequate, and reasonable. *Dunk*, 48 Cal.App.4th at
15 1801 (citation omitted). The purpose of this requirement is to “prevent fraud, collusion or unfairness
16 to the class.” *Id.* The court has broad discretion in determining whether to approve a proposed settlement.
17 *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,245 (affirming approval of nationwide
18 class settlement); *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2001) 85 Cal.App.4th
19 1135, 1145-46 (affirming approval of class settlement).

20 But the law generally favors settlement, particularly in class actions, where substantial resources
21 can be conserved by avoiding the time, cost, and rigors of litigation. *In re Microsoft I-V Cases* (2006)
22 135 Cal.App.4th 706, 723, fn. 14 (“Public policy generally favors the compromise of complex class
23 action litigation”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1125 (denial of class
24 settlement was “particularly problematic” in light of the public policy favoring settlement of complex
25 class actions.)

26 In evaluating the fairness of a class settlement, courts consider several relevant factors, including
27 “the strength of the plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation,
28 the risk of maintaining class action status through trial, the amount offered in settlement, and the extent

1 of discovery completed and the stage of the proceedings, the experience and views of counsel, the
2 presence of a governmental participant, and the reaction of the class members to the proposed
3 settlement.” *Dunk*, 48 Cal.App.4th at 1801. These factors are not exhaustive, and the court “is free to
4 engage in a balancing and weighing of factors depending on the circumstances of each case.” *Wershba*,
5 91 Cal.App.4th at 245.

6 A presumption of fairness exists where: 1) the settlement is reached through arm’s-length
7 negotiations; 2) investigation and discovery are sufficient to allow counsel and the court to act
8 intelligently; 3) counsel is experienced in similar litigation; and 4) the percentage of objectors is small.
9 *Dunk*, 48 Cal.App.4th at 1802. Ultimately, the Court must “satisfy itself that the class settlement is within
10 the ‘ballpark’ of reasonableness,” which requires receiving “basic information about the nature and
11 magnitude of the claims in question and the basis for concluding that the consideration being paid for
12 the release of those claims represents a reasonable compromise.” *Kullar*, 168 Cal.App.4th at 133. As
13 thoroughly discussed in the preliminary approval, and preliminary approved by this Court, the parties’
14 settlement satisfies these requirements.

15 **B. The Class Action Settlement Approval Procedure**

16 No action brought on behalf of a class may be settled, compromised, or dismissed without the
17 approval of the Court. See, Cal. Rules of Court, Rule 3.769(a). There are three steps to the Court’s
18 settlement approval process:

- 19 "(1) Preliminary Approval of the proposed Settlement at an
informal hearing;
- 20 (2) Dissemination of Notice of the Settlement to all affected
Class Members; and,
- 21 (3) A "Formal Fairness Hearing," or Final Settlement Approval Hearing, at which Class Members
22 may be heard regarding the Settlement, and at which evidence and argument concerning the
fairness, adequacy, and reasonableness of the Settlement is presented."

23 This three-step settlement approval process is prescribed by the *Manual for Complex Litigation*
24 prepared by the Federal Judicial Center; is widely followed in the federal circuits; and has also been
25 adopted by California courts. See, *Manual for Complex Litigation*, fourth § 21.63 (2004); see also, *Bell v.*
26 *American Title Ins. co.* (1991) 226 Cal.App.3d 1589, 1599-1602 (outlining the Class Action settlement-
27 approval process). Specifically, the *Manual for Complex Litigation*, fourth provides at §§ 21.632-21.633:
28 Review of a proposed class action settlement generally involves two hearings. First, counsel
submits the proposed terms of settlement and the judge makes a preliminary fairness evaluation.

1 In some cases, this initial evaluation can be made on the basis of information already known,
2 supplemented as necessary by briefs, motions, or informal presentations by parties. If the case is
3 presented for both class certification and settlement approval, the certification hearing and
4 preliminary fairness evaluation can usually be combined.

5 ****

6 Once the judge is satisfied as to the certifiability of the class and the results of the initial inquiry
7 into the fairness, reasonableness, and adequacy of the settlement, notice of a formal Rule 23(e)
8 fairness hearing is given to the class members.

9 The first two steps of this process are now complete. The first step was completed on April 9,
10 2021, when this Court granted preliminary approval of the Settlement. Mirzayan Decl., ¶ 3, **Exhibit “2”**.
11 In doing so, the Court determined that the Settlement was within the range of possible final approval and
12 that notice to the Class Members of the Settlement terms and of the scheduling of the formal fairness
13 hearing should be distributed. *See Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 234-35; 4
14 *Newberg, supra*, § 11.25

15 The second step in the class action settlement approval process, the dissemination of the Notice,
16 is complete as well. In accordance with the Court’s Preliminary Approval Order, the Parties worked with
17 the Settlement Administrator to implement the Court-approved notice procedure, which employed the best
18 practicable means to disseminate to all Class Members notices of the Settlement terms and of the date and
19 time of the final approval. (*See generally*, Mitzner Decl.)

20 The third and last step in the class action settlement approval process is the final approval hearing
21 at which the Court shall determine whether the Settlement is fair, adequate, and reasonable. At the final
22 approval hearing, scheduled for August 6, 2021, Class Members will have the opportunity to be heard
23 regarding the Settlement, and Class Counsel will present evidence and argument in support of the
24 Settlement. *See Manual*, § 21.634. At the conclusion of the final approval hearing, this Court will decide
25 whether to grant final approval of the Settlement and whether to enter a final order and enter judgment in
26 accordance with the Settlement.

27 This Court will also ultimately determine the reasonableness of any attorneys' fees, the repayment
28 of costs advanced by Class Counsel, the Enhancement Award and the costs of the Settlement
Administrator. These matters are solely within the discretion of the Court, who must issue its
determination after reviewing the appropriate applications made by Class Counsel. The Court must also

factor objections raised by Class Members (the criteria for approval of final settlement are set forth at *Newberg* commencing at § 11.41).

C. This Court Preliminarily Found this Settlement to Be Fair, Reasonable, and Adequate

Before granting preliminary approval of a class action settlement, courts must determine that the proposed settlement is fair, reasonable, and adequate - and not a product of fraud, overreaching, or collusion. (Cal. R. Ct. 3.769 (g); Cal. Civ. Pro. Code § 382; *Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at 1801.) Courts must presume that a settlement is fair, reasonable, and adequate, and thus appropriate for preliminary approval when the following three factors are satisfied: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." (*Wershba*, *supra*, 91 Cal.App.4th at p. 245; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128; *Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399.)

There is no question that these factors are satisfied here. On April 9, 2021 this Court preliminarily approved the settlement, concluding that: (1) the settlement is entitled to a presumption of fairness; (2) the settlement can be preliminarily deemed fair, adequate, and reasonable; (3) the releases appear to be proper as they are limited in scope and time and are adequately tethered to the pleading; (4) the class may be conditionally certified since the prerequisites of class certification have been satisfied; and (5) the proposed method of class notice appears to provide the best possible means for giving actual notice to putative class members. *See Generally*, **Exhibit "2"**.

1. The Settlement Was Negotiated at Arm's Length and Not Collusive

There certainly is no collusion between the Parties. Indeed, courts should give considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in assuring themselves that a settlement agreement represents an arm's-length transaction entered without self-dealing or other potential misconduct. (*Kullar v. Foot Locker*, *supra*, 168 Cal.App.4th at 129.)

The settlement process of this action has been thorough and extensive. It has been reached as a result of substantial effort by the parties and their counsel. The settlement was reached after extensive factual and legal investigation and research, numerous discussions, exchanges of documents,

1 correspondence, review of pleadings, evidence and rulings in similar actions litigated elsewhere in the
2 state, and review of similar cases in the same industry elsewhere in the country. The settlement amount
3 is, of course, a compromise figure. It considered, risks related to liability, damages, and all the defenses
4 asserted by Defendant. Mirzayan Decl., ¶ 16.

5 Plaintiff asserts that Defendants misclassified employees as independent contractors. Class
6 Counsel reviewed documents produced by Defendants, including time records and payroll records. Based
7 thereon, Class Counsel reasonably believed that Plaintiff would have a significant chance of certifying the
8 class. Mirzayan Decl. ¶ 17.

9 On the other hand, Defendants have argued that Plaintiffs cannot meet the requirements of class
10 certification. Defendants strongly believe that Defendants' policies and procedures are fully compliant
11 with the law. While Plaintiff believed in his chance of success of certifying the claims, Plaintiff recognizes
12 the potential risk, expense and complexity posed by further litigation. Litigating Plaintiff's claims in this
13 Litigation, claims that involve numerous Class Members during the Class Period, would require
14 substantial additional preparation and discovery and ultimately would involve the deposition and
15 presentation of numerous witnesses (including expert witnesses), as well as the consideration, preparation
16 and analysis of expert reports. Therefore, should litigation have progressed any further there would have
17 been significant expense incurred by each side.

18 Plaintiffs and Defendant have very strong positions on liability in this case. Defendant denies any
19 liability or wrongdoing of any kind associated with the claims alleged in Plaintiff's operative First
20 Amended Complaint, and further denies that, for any purpose other than that of settling this lawsuit, this
21 action is appropriate for class treatment. In light of the sharply contested legal and factual issues, the risks
22 of continued litigation, and substantial benefits to Class Members under the Settlement, the terms and
23 conditions of this class settlement are fair and reasonable to all sides. Mirzayan Decl., ¶ 18.

24 In sum, the settlement was negotiated at arm's-length, and was not reached until after the parties
25 completed a lengthy negotiation. Mirzayan Decl. ¶ 19; *see Villegas v. J.P. Morgan Chase & Co.* (N.D.Cal.
26 Nov 21, 2012) 2012 U.S. Dist. LEXIS 166704, *15 (noting that "[i]n the instant action, the Settlement
27 was reached following two sessions with a private mediator experienced in ... class actions ... [t]his
28 tends to support the conclusion that the settlement process was not collusive."). The Court can properly

1 find the settlement is reasoned, deliberate and the result of non-collusive negotiation.

2 **2. Sufficient Investigation and Discovery Have Been Conducted to Allow**

3 As discussed at preliminary approval, class counsel conducted a thorough examination and
4 evaluation of the relevant law and facts to assess the merits of the pending and potential claims in this
5 matter. Sufficient investigation and exchange of information, including adequate calculations regarding
6 all relevant facts for all claims and damages prepared Class Counsel prepared for settlement
7 discussions. These efforts resulted in the parties having a clear view of the strengths and weaknesses of
8 their respective cases and achieving a resolution on favorable terms leading to Settlement.

9 Class counsel believes the proposed settlement is an excellent and fair result, reached after
10 conducting the investigation and discovery necessary to make a full and reasoned assessment of the
11 class claims. *Hanlon v. Chrysler Corporation* (9th Cir. 1988) 150 F.3d 1011, 1027 (affirming approval of
12 settlement and noting “[t]here is no evidence to suggest that the settlement was negotiated in haste or in
13 the absence of information illuminating the value of plaintiffs’ claims.”)

14 **3. The Experience and Views of Counsel**

15 Also weighing in favor of final approval is Class counsel’s experience and success in similar class
16 cases. *Dunk*, 48 Cal.App.4th at 1802. Class counsel is experienced in class action litigation, specifically
17 employment litigation. Defense counsel equally qualified and experienced. This was a thoroughly
18 negotiated settlement. Counsel concur that the settlement is a fair and reasonable resolution to this matter
19 in light of the various risks and costs to the respective parties of continued litigation. Plaintiff’s goal has
20 been realized to have redress for the employees whose rights were alleged to have been violated. Mirzayan
21 Decl., ¶ 20. While Defendants deny liability, they have nonetheless agreed to settle the matter to avoid
22 any potential expense.

23 **4. The Positive Reaction of Class Members Greatly Favors Final Approval**

24 Finally, courts look at the reaction of class members to determine if a settlement that directly
25 affects their interests should be approved as fair, adequate, and reasonable. *Dunk*, 48 Cal.App.4th at 1801.
26 The reaction of the Class Members here has been incredibly positive (i.e., 100% participation rate) greatly
27 favoring final approval. Mirzayan Decl., ¶ 21.

28 Further, a court may appropriately infer that a class action settlement is fair, adequate, and

reasonable even when class members object to it. Indeed, a court may approve a class action settlement as fair, adequate, and reasonable even over the objections of a significant percentage of class members. (See *Boyd v. Betchel Corp.* (D.C. Cal 1976) 485 F.Supp. 610, 624; *Reed v. General Motors* (5th Cir. 1983) 703 F.2d 170, 174; *In re Wash. Pub. Power Supply System Sec. Litig.* (D. Ariz. 1989) 720 F.Supp. 1379, 1394.)

In this action, there are no objections to the Settlement which the Court should construe as a further indication of Class Members' support for the Settlement as fair, adequate, and reasonable. See *Mitzner Decl.* ¶ 10. (*7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1152-1153 (finding the response of class members "overwhelmingly positive" where "a mere 80 of the 5,454 national class members elected to opt out" and only nine objected).) Clearly, this represents a vote of confidence by the settlement class and indicates the settlement is fair, adequate, and reasonable.

1. The LWDA Has Not Objected to This Settlement, Favoring Approval

Finally, *Dunk* provides that the presence of a governmental participant favors approval. *Dunk*, 48 Cal.App.4th at 1801. Plaintiff provided the California Labor and Workforce Development Agency notice of his PAGA claim, and then of the settlement, as part of the preliminary approval process, as required under Cal Lab. Code § 2699.3. Additionally, on July 21, 2021, Class Counsel appraised the Labor and Workforce Development Agency ("LWDA") of the Final Approval Hearing date set for August 6, 2021 at 10:00 a.m. by electronically submitting the relevant documents, which were filed with this Court, via online filing at <https://dir.tfaforms.net/195>. *Mirzayan Decl.*, ¶ 22, **Exhibit "4"**.

Therefore, the LWDA has had the opportunity to intervene or otherwise comment on the adequacy of the settlement, and has not done so. This factor further favors final approval.

5. The Class Received Adequate Notice

As part of its order granting preliminary approval, the Court approved the manner and form of notice, "The Court approves, as to form and content, the Notice of Class Action Settlement" *Mirzayan Decl.*, ¶ 23, Preliminary Approval Order, **Exhibit "2"**, ¶ 6.

The manner of giving notice and the content of the notice must "fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings." *7-Eleven*, 85 Cal.App.4th at 1164 (citation omitted.) The Notice of

1 settlement of a class action “must contain an explanation of the proposed settlement and procedures for
2 class members to follow in filing written objections to it and in arranging to appear at the settlement hearing
3 and state any objections to the proposed settlement.” *California Rules of Court* 3.769(f). Under Cal.
4 Rules of Court, Rule 3.766(d) the notice must include the following: (1) A brief explanation of the case,
5 including the basic contentions or denials of the parties; (2) A statement that the court will exclude the
6 member from the class if the member so requests by a specified date; (3) A procedure for the member to
7 follow in requesting exclusion from the class; (4) A statement that the judgment, whether favorable or not,
8 will bind all members who do not request exclusion; and (5) A statement that any member who does not
9 request exclusion may, if the member so desires, enter an appearance through counsel. The court has broad
10 discretion in deciding whether to approve the proposed class notice. *Wershba*, 91 Cal.App.4th at 252.

11 Here, the Class Notice mailed to Class Members, contained all the required components.
12 Specifically, it included: (1) the definition of the Settlement Class, (2) a description of the substantive
13 issues and proceedings to date; (3) a neutral description of the Settlement; (4) the amounts of Attorneys’
14 Fees and Litigation Expenses; (5) information regarding the right to opt out of the Settlement, the
15 procedure for doing so and the date by which such action must be taken; (6) information regarding the
16 right to challenge one’s number of work weeks, the procedure for doing so and the date by which such
17 action must be taken; (7) information regarding the right to exclude oneself from the Settlement, the
18 procedure for doing so and the date by which such action must be taken; (8) information regarding the
19 right to file an objection regarding the Settlement, the procedure for doing so and the date by which such
20 action must be taken; (9) the consequences of remaining a member of the Settlement Class, including the
21 fact that one will be bound by the judgment; (10) the date, time and place of the final approval hearing;
22 (11) the identity of the Class Representative; and (12) the identity and contact information of Class
23 Counsel and the Claims Administrator. (*See generally*, Mitzner Decl.).

24 An appropriate notice has a “reasonable chance of reaching a substantial percentage of the class
25 members.” *Wershba*, 91 Cal.App.4th at 251 (citation omitted). Here, the Court-approved notice adequately
26 protected the due process rights of all class members and satisfied Cal. Rules of Court, rule 3.766. The
27 method of notice was more than adequate, in that the Class Notice was via First Class mail to Class
28 Members at their last known addresses and there are procedures in place to make reasonable efforts to

1 locate Class Members who no longer live at their last known address. The Notice Packet reached
2 substantial percentage of class members and fairly apprised them of the settlement. The extremely high
3 reach shows the plan's success. (*See generally*, Mitzner Decl.).

4 For the above reasons, the Court should find the notice process was reasonable and satisfied due
5 process and the requirements of California law.

6 **V. CONCLUSION**

7 For the foregoing reasons, the proposed Class Settlement is fair, adequate, and reasonable. It
8 will result in substantial payments to Class Members; it is non-collusive; and it was achieved as the
9 result of informed, extensive, and arms' length negotiations conducted by counsel for respective
10 parties who are experienced in wage and hour class action litigation. For the foregoing reasons, the
11 parties respectfully request that the Court grant final approval of the proposed settlement, and sign
12 the proposed Order.

13
14 DATED: July 20, 2021

LAW OFFICES OF NATALIE MIRZAYAN

15 By: 

16 Natalie Mirzayan, Esq.
17 Attorney for Plaintiff
KALVYN ESCOBAR

18 DATED: July 20, 2021

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