

BRADLEY/GROMBACHER, LLP
Marcus J. Bradley (SBN 174156)
Kiley L. Grombacher (SBN 245960)
Corey S. Smith (SBN 312002)
31365 Oak Crest Dr., Suite 240
Westlake Village, CA 91361
Telephone: (805) 270-7100
Facsimile: (805) 270-7589
Email: mbradley@bradleygrombacher.com
kgrombacher@bradleygrombacher.com
csmith@bradleygrombacher.com

Attorneys for Plaintiffs Denise Droesch,
Kyonna Harrison, Janisha Lee Price,
and other individuals similarly situated

[Additional counsel listed on next page]

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

DENISE DROESCH; KYONNA
HARRISON; and JANISHA LEE PRICE
as individuals and on behalf of other
aggrieved employees,

Plaintiffs,

vs.

WELLS FARGO BANK, N.A., a United
States Corporation, and DOES 1 – 10,
inclusive

Defendant.

CASE NO. 34-2021-00292066-CU-OE-GDS

**MEMORANDUM OF POINTS &
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT AND
PROVISIONAL CLASS
CERTIFICATION**

[Filed and served concurrently with Notice
of Motion; Declarations of Attorneys
Christina A. Humphrey; Marcus J. Bradley;
of Plaintiffs Denise Droesch; Kyonna
Harrison; Janisha Lee Price; of Settlement
Administrator; and [Proposed] Order]

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Complaint filed: January 7, 2021

CHRISTINA HUMPHREY LAW, P.C.

Christina A. Humphrey (SBN 226326)

1117 State Street

Santa Barbara, CA 93101

Telephone: (805) 618-2934

Email: christina@chumphreylaw.com

Attorneys for Plaintiffs Denise Droesch,

Kyonna Harrison, Janisha Lee Price,

and other individuals similarly situated

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I.

INTRODUCTION

This Memorandum is submitted in support of Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement and Provisional Class Certification. The proposed settlement before this Court will dispose of all claims asserted against WELLS FARGO BANK, N.A., (hereinafter referred to as “Defendant”) by Plaintiffs and all provisional class members and PAGA group members in this Consolidated Action, except for any absent settlement class members who exclude themselves (“opt-out”) from the settlement Class. All Settlement Class Members are also included within the scope of the PAGA Settlement, for which Plaintiffs also seek approval, as discussed below.

II.

STATEMENT OF FACTS

Plaintiffs Denise Droesch, Kyonna Harrison, and Janisha Lee Price filed various actions against Defendant in state and federal court (the “Original Actions”), which Plaintiffs will seek to consolidate through the concurrent filing of the parties’ Joint Stipulation and [Proposed] Order for Leave to File Plaintiffs’ Second Amended Class and Representative Action Complaint. (“SACC”).¹ The Original Actions collectively allege that Telephone Bankers worked off the clock in logging in and out of their computers at the beginning and end of their workday, and were not provided meal and rest breaks in compliance with California law. The SACC consolidates the claims asserted in the Original Actions in one putative class and PAGA action on behalf of Plaintiffs and other individuals who worked for Defendant in the non-exempt position of “Telephone Banker.” The SACC alleges the following causes of action: (1) Failure to Pay

¹ Below is a list of all the original actions that will be resolved through settlement of the claims in the SACC.

Droesch, et al. v. Wells Fargo Bank, N.A., No. 34-2021-00292066 (Sacramento Sup. Ct.) (“Droesch PAGA Action”); *Price v. Wells Fargo Bank, N.A.*, No. 34-2022-00331236 (Sacramento Sup. Ct.) (“Price UCL Action”); *Droesch, et al. v. Wells Fargo Bank, N.A.*, No. 3:20-cv-06751-JSC (N.D. Cal.) (“Droesch Federal Action”); and *Price v. Wells Fargo Bank, N.A.*, No. 3:22-cv-03128-JSC (N.D. Cal.) (“Price Federal Action”).

1 Overtime; (2) Failure to Pay Minimum Wages; (3) Failure to Pay Regular Wages; (4) Failure to
2 Provide Meal Periods or Compensation in Lieu Thereof; (5) Failure to Provide Rest Periods; (6).
3 Failure to Pay All Wages Upon Termination; (7) Failure to Provide Accurate Wage Statements;
4 (8) Violation of California Business & Professions Code; and (9) Civil Penalties under the Private
5 Attorneys General Act of 2004.

6 This matter has a long and complex procedural history that is explained in more detail
7 in paragraphs 9-18 of the Declaration of Christina A. Humphrey submitted herewith
8 (“Humphrey Dec.”).

9 III.

10 **KEY POINTS OF THE SETTLEMENT**

11 The parties’ Stipulation of Settlement is attached as Exhibit A to the Humphrey Declaration.

12 **A. The Financial Terms of the Settlement Agreement**

13 The Settlement provides for a maximum Gross Settlement Amount of \$385,000.00 (Three
14 Hundred and Eighty Five Thousand Dollars) to be paid by Defendant to a common fund. (Settlement
15 at ¶ 1.17) *This is a guaranteed, non-reversionary fund, meaning that no money will revert to*
16 *Defendant.* Participating Class members do not need to submit a claim form to receive their share of
17 the Settlement. (Settlement at ¶2.7.10)

18 Following deduction of Court-approved attorneys’ fees (Plaintiffs seek 35% or \$134,750) and
19 litigation costs (not to exceed \$120,000), Settlement Administration Costs (not to exceed \$23,850),
20 Class Representative Payments (not to exceed \$10,000), the payment to the California Labor and
21 Workforce Development Agency (“LWDA”) (\$40,000), and any other fees, taxes, or expenses
22 incurred in implementing the Settlement, the Net Settlement Amount will automatically be
23 distributed to all Participating Class Members (*i.e.*, those who do not submit timely and valid requests
24 for exclusion). (Settlement at ¶ 1.17) The net settlement for distribution to Settlement Class
25 Members is \$56,400. (Humphrey Dec. ¶44)

26 Defendant will pay its portion of payroll taxes as the Settlement Class Members’ current
27 or former employer, and those funds will be separate and apart from the Gross Settlement Amount.

(Settlement at ¶1.13) Each Settlement Class Member’s gross Individual Settlement Payment will be apportioned as follows: one-third (1/3) as wages and two-thirds (2/3) as non-wages (including penalties and interest). (Settlement at ¶2.1.1) The additional individual PAGA Payments will be apportioned as one hundred percent (100%) penalties, to be reported on IRS Form 1099 by the Settlement Administrator. (Settlement at ¶2.1.1)

B. The Definition of the Settlement Class and PAGA Group

Settlement Class: “All non-exempt persons current and former California non-exempt hourly telephone bankers employed by Defendant who worked at any time during the Class Period, which means the period from December 12, 2018, through the date of the Preliminary Approval Order” and do not opt out of the settlement. (Settlement at ¶¶ 1.1 and 1.42) The estimated total class includes 4,178 class members, who are estimated to have worked 408,243 workweeks from December 12, 2018, through May 31, 2024. Settlement Class Members were paid an average hourly rate of \$22.41. (Humphrey Dec. ¶24)

The “ PAGA Group” “All Class Members who were employed by Defendant, or any of them, in California as an hourly non-exempt telephone banker employee between November 3, 2019, and the end of the Class Period. (Settlement at ¶ 1.30) The estimated PAGA group includes 3,546 members, who are estimated to have worked 166,402 pay periods from November 3, 2019 – May 31, 2024. PAGA Group Members were paid an average hourly rate of \$22.85. (Humphrey Dec. ¶25).

C. Background of the Settlement Reached

Plaintiffs’ attorneys and the Class Representatives have litigated the Original Actions for over four years, collectively over 2000 hours, including investigating the claims before the initiation of litigation, gathering 50 declarations in support of the action, conducting multiple rounds of discovery, reviewing and producing thousands of documents by Plaintiff and Defendant, briefing multiple motions including motions to compel arbitration, motions to amend the complaint, motions to compel discovery, motions for summary adjudication against the individual plaintiffs, and motions to stay, performing statistical sampling, and preparing and responding to expert reports and discovery. (Humphrey Dec. ¶19)

1 In total, nineteen (19) depositions were taken in the case. The Parties took depositions of
2 Plaintiffs, Persons Most Knowledgeable, Wells Fargo supervisors, and experts. The Parties
3 engaged in substantial meet and confer efforts prior to the dates for depositions and spent
4 significant time preparing for and taking the depositions. (Humphrey Dec. ¶20)

5 The Parties attended a full day global mediation on May 4, 2023, with mediator
6 Peter Rukin, Esq., at which they attempted to settle all four of the pending actions between the
7 Settling Parties, putative classes and allegedly aggrieved employees. No settlement was reached
8 at the mediation, and the parties continued to litigate the pending cases. Through the further
9 efforts of mediator Rukin and the parties, a global settlement was reached in April 2024 and the
10 settlement agreement finalized just days prior to the filing of the Motion for Preliminary
11 Approval. (Humphrey Dec. ¶21)

12 **D. The Claims Being Settled**

13 The claims asserted in this case are set forth in the Second Amended Consolidated Complaint
14 (“SACC”), filed simultaneously with this Motion. This consolidated case is brought on behalf of non-
15 exempt Telephone Bankers who primarily worked from Wells Fargo’s call centers and primarily
16 alleges off-the-clock claims stemming from time spent booting up and shutting down computers at the
17 beginning and end of the workday, as well as derivative claims under California law. The case also
18 alleges failure to provide meal and rest breaks and failure to pay premiums at the regular rate. All of
19 the claims asserted in the SACC were asserted and litigated in one or more of the Original Actions.

20 This case has been impacted by the litigation and settlement of overlapping claims in other
21 actions, which is worth noting here:

22 (1) Most of the time period for Plaintiffs’ allegations for failure to pay meal and break
23 premiums at the regular rate were settled and released in 2022, in the case of *Simon v. Wells*
24 *Fargo Bank, National Association*, Los Angeles Superior Court No. 19STCV42777, as to
25 all non-exempt Wells Fargo employees.

26 (2) This Court stayed Plaintiffs’ pursuit of Labor Code 2802 claims based on the doctrine of
27 exclusive concurrent jurisdiction and the existence of *Scorby et. al. v. Wells Fargo Bank*,

1 N.A., Marin County Superior Court No. CIV 2100758, which alleges claims for failure to
2 reimburse for business expenses such as internet and cell phone usage (those claims are
3 NOT alleged in the SACC and are NOT being released herein); and

4 (3) The class period in this case was already restricted (in the beginning of the class period
5 and could not date back four years) because of earlier nationwide settlements in cases with
6 the same allegations, *Harris, et al. v. Wells Fargo Bank, N.A.* (CV-17-01146-PHX-DMF),
7 consolidated with *Kerness v. Wells Fargo Bank, N.A.*, CV-17-02516-PHX-DMF); and
8 *Singer, et al. v. Wells Fargo Bank, N.A.*, (W.D. Tex. Case No. 5:19-cv-00679). The class
9 period released herein does not overlap with those prior settlements.

10 (Humphrey Dec. ¶36)

11 There is no other litigation being impacted by the settlement of these claims.

12 **E. The Scope of the Releases**

13 The Parties negotiated a release that is fairly tailored to the claims that were or could be
14 asserted in the lawsuit based on the facts alleged in the complaint. See *Amaro v. Anaheim Arena*
15 *Management, LLC* (2021) 69 Cal.App5th 521, 538-539. The Released Claims will expressly include
16 those alleged in the Consolidated Complaint and those claims based solely upon the facts alleged in
17 the Consolidate Complaint. (Settlement at ¶ 2.4.1) The entry of final judgment will release the
18 “Released Class” and “PAGA Claims” set forth below. (Settlement ¶2.8.1)

19 “**Released Class Claims**” will collectively mean all claims, including without limitations
20 demands, rights, liabilities and causes of action of every nature and description whatsoever
21 including without limitation statutory, constitutional, contractual or common law claims, whether
22 known or unknown, against the Defendant Releasees, or any of them based on the facts alleged in
23 the operative Complaints in each pending matter filed by Plaintiffs (as identified in Paragraph 1.24
24 above), that accrued at any point in time prior to and including the Effective Date for alleged or
25 actual: (i) unpaid overtime; (ii) unpaid minimum wages; (iii) unpaid regular wages; (iv) unpaid
26 meal period premiums and failure to provide meal periods; (v) unpaid rest period premiums and
27 failure to provide rest periods; (vi) final wages not timely paid; (vii) wages not timely paid during

1 employment; (viii) non-compliant wage statements; and (ix) violation of California Business and
2 Professions Code § 17200 et seq., and, specifically, for alleged violations of Labor Code sections
3 201, 202, 203, 204 et seq., 210, 221, 222, 223, 226, 226.7, 246, 256, 510, 512, 558, 1174(d),
4 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and California Code of Regulations, Title 8, Section
5 11040, Subdivisions 5(A)-(B) and 12(A). Released Class Claims include (1) claims for damages,
6 penalties or any other remedies under any statute or regulation or other provision of law, based on
7 the facts alleged in the Complaint, including without limitation claims under California Labor
8 Code sections 201, 201.3, 202, 203, 204 et seq., 210, 221, 222, 222.5, 223, 224, 225.5, 226, 226.3,
9 226.4, 226.7, 246, 256, 510, 512, 516, 558, 1174, 1174.5, 1182.12, 1193.5, 1193.6, 1194, 1194.2,
10 1194.5, 1197, 1197.1, 1198, 2810.5, California Business and Professions Code section 17200 *et*
11 *seq.* based on the preceding sections, the applicable California Industrial Welfare Commission
12 Wage Order based on the facts alleged in the Complaints; (2) claims, based on the facts alleged in
13 the Complaint, for injunctive relief, restitution, disgorgement, accounting, declaratory relief or
14 other equitable relief; (3) any and all claims, based on the facts alleged in the Complaint, for
15 interest, costs, or attorney fees, including without limitation claims under California Labor Code
16 sections 218.5 & 1194 and California Code of Civil Procedure section 1021.5; (4) and, to the extent
17 not covered above, any and all claims arising from the facts alleged in the Complaints in the
18 Litigation. (Settlement ¶1.36)

19 “Class Period” means the period from December 12, 2018 through the date of the
20 Preliminary Approval Order. (Settlement ¶1.5)

21 “**Released PAGA Claims**” will collectively mean all claims, demands, rights, liabilities
22 and causes of action of every nature and description whatsoever including without limitation
23 statutory, constitutional, contractual or common law claims, against the Defendant Releasees, or
24 any of them based on the facts alleged in the operative Complaint in the *Droesch* PAGA Action
25 (as identified in Paragraph 1.24 above), that accrued during the PAGA Period for alleged or
26 actual civil penalties pursuant to PAGA for alleged violations of Labor Code sections 201, 201.3,
27 202, 203, 204 et seq., 210, 221, 222, 222.5, 223, 224, 225.5, 226, 226.3, 226.4, 226.7, 246, 256,

1 510, 512, 516, 558, 1174, 1174.5, 1182.12, 1193.5, 1193.6, 1194, 1194.2, 1194.5, 1197, 1197.1,
2 1198, 2810.5, the applicable California Industrial Welfare Commission Wage Order(s), and
3 California Code of Regulations, Title 8, Sections 11040, Subdivision 5(A)-(B), and 11090.
4 (Settlement ¶1.37)

5 “PAGA Period” means the period between November 3, 2019, and the end of the Class
6 Period. (Settlement ¶1.32)

7 **F. Allocation of the Settlement Money to Settlement Class and PAGA Members**

8 Each Class Member’s Settlement Share will be calculated by multiplying the quotient of
9 the Settlement Class Members’ Individual Workweeks divided by the Class Workweeks, by the
10 Net Settlement Amount. Settlement at ¶ 1.18. Each Settlement Class Member’s gross Individual
11 Settlement Payment will be apportioned as follows: one-third (1/3) as wages and two-thirds (2/3)
12 as non-wages (including penalties and interest). (Settlement ¶ 2.1.1) The Wage Portion will be
13 reduced by applicable taxes, withholdings and deductions and a Form W-2 will be issued to each
14 Class Member with respect to the Wage Portion. (*Id.*) Wells Fargo will pay all employer-side
15 payroll tax attributable to the Wage Portion of the Settlement Share payments, and this amount
16 will be paid separately by the employer outside of the Gross Settlement Amount. (Settlement ¶
17 1.13) The amounts paid as non-wages (i.e., penalties and interest) will be subject to all authorized
18 and required withholdings customarily made from employees’ wages other than tax withholdings
19 and will be reported on IRS Form 1099 by the Settlement Administrator. (Settlement ¶ 2.1.1)

20 Each PAGA Group Member’s share will be calculated by multiplying the quotient of the
21 PAGA Group Members’ Individual Workweeks during the PAGA Period divided by the total
22 number of workweeks that the PAGA Group Members collectively worked during the PAGA
23 Period, by 25% of the PAGA Settlement Amount. (Settlement ¶ 1.19) Payments will be
24 apportioned as one hundred percent (100%) penalties, to be reported on IRS Form 1099 by the
25 Settlement Administrator. (Settlement ¶ 2.1.1)

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Within fifteen (15) business days after entry of the Preliminary Approval Order, Defendant will deliver to the Settlement Administrator an electronic database (“Class Database”), which will list for each Class Member: (1) first and last name; (2) Last Known Address; (3) social security number, if known; (4) the total number of Individual Workweeks during the Class Period and PAGA Period (if any) for each Class Member; (5) the amount of each Class Member’s Individual Settlement Payment allocated to wages, and the amount allocated to non-wage recovery; (6) the amount of each Class Member’s total Individual Settlement Payment; and (7) the amount of each Class Member’s total Individual PAGA Payment, if any. (Settlement ¶2.6.2)

Within thirty (30) business days after entry of the Preliminary Approval Order, the Settlement Administrator will mail the Class Notice to all identified Class Members at their Last Known Addresses via first class mail through the United States Postal Service, postage pre-paid. Prior to the mailing of the Class Notice, the Settlement Administrator will establish and activate a dedicated webpage, accessible to Class Members only (to the extent possible) for this Settlement, which is at www.rustconsulting.com/cases/droesch-v-wellsfargo. The Administrator will post on the website a copy of the (i) Consolidated Amended Complaint, (ii) Class Notice, (iii) Preliminary Approval Order, (iv) Notice of the Final Approval Hearing and any changes thereto, and (v) Class Counsels' Motion for Attorneys' Fees and Costs. After Final Approval and Entry of Final Judgment, the Settlement Administrator will post the Court's Order of Final Approval and the Notice of Entry of Final Judgment, which will remain posted for sixty (60) days after judgment is entered. A copy of the proposed Notice of Final Judgment is attached as Exhibit 2 to the Settlement Agreement (which is attached as Exhibit A to the Humphrey Dec.) (Settlement ¶2.6.4)

Prior to mailing the Class Notice to each Class Member, the Settlement Administrator will conduct a search for Updated Addresses for all Class Members using the National Change of Address Database, maintained by the United States Postal Service to review the accuracy of the last mailing address known by Defendant, and, if possible, update Class Members' mailing addresses. To the extent this process yields an Updated Address, that Updated Address will

1 replace the Last Known Address and be treated as the new Last Known Address for purposes of
2 this Settlement Agreement and for subsequent mailings in particular. (Settlement ¶ 2.6.6)

3 The Settlement provides that the Settlement Administrator will mail the Class Notice to all
4 identified Class Members via first-class U.S. mail using the mailing address information provided by
5 Defendant, unless modified by any updated address information that the Settlement Administrator
6 obtains in the course of administration of the Settlement. (Settlement at ¶ 2.6.2) If a Class Notice is
7 returned because of an incorrect address, the Settlement Administrator will take reasonable steps
8 including tracing, address searches, and prompt re-mailing to Class Members within five (5) days of
9 the return. (*Id.* at ¶¶ 2.6.8-2.6.12)

10 The Parties believe that mailing notices is the most accurate, cost-effective way to provide
11 notice to the settlement class members because the addresses used were addresses provided by the
12 Settlement Class Members while employed by Defendant. (Humphrey Decl., ¶ 27)

13 After this Court grants Final Approval of the Settlement, Defendant will wire to the
14 Settlement Administrator the Gross Settlement Amount within fifteen (15) business days of the
15 Effective Date. (Settlement ¶2.9.1) Within thirty (30) business days after the Effective Date, ²the
16 Settlement Administrator will disburse: (1) the Net Settlement Amount to be paid to Settlement
17 Class Members; (2) the Attorneys' Fees and Litigation Expenses, as approved by the Court, to
18 Class Counsel; (3) the Enhancement Payments, as approved by the Court, to the Class and PAGA
19 Representatives; (4) the Administration Costs, as approved by the Court, to the Settlement
20 Administrator; and (5) the PAGA Settlement Amount, as approved by the Court, to the LWDA
21

22
23 ² Effective Date” means the date on which the Judgment becomes final and can no longer be
24 appealed or otherwise disturbed because one of the following has occurred: (i) the final affirmance
25 on an appeal of the Judgment; (ii) the final dismissal with prejudice of any appeal from the
26 Judgment; or (iii) if there are no objectors and no plaintiffs in intervention at the time the Court
27 grants final approval of the settlement and enters the Judgment, the date the Court grants final
28 approval and enters Judgment. Any proceeding or order, or any appeal or petition for a writ
pertaining solely to Class Counsel's application for or award of attorneys' fees will not, by itself,
in any way delay or preclude the Judgment from becoming Final.

1 and PAGA Group Members. Following disbursement, the Settlement Administrator will provide
2 counsel for the Settling Parties with a written confirmation of the disbursement mailing.
3 (Settlement ¶ 2.9.2) The Settlement Administrator will issue to each Settlement Class Member
4 one check payable to the Settlement Class Member from the qualified settlement account
5 (administered by the Settlement Administrator but funded by Defendant) for the Individual
6 Settlement Payment, less applicable taxes and withholdings. The Settlement Administrator will
7 mail this check to each Settlement Class Member at his or her Last Known Address, or Updated
8 Address if obtained. (Settlement ¶2.9.3)

9 **B. The Class Notice**

10 A copy of the Class Notice is attached as Exhibit 1 to the Settlement Agreement, and is also
11 attached as Exhibit A to the Humphrey Declaration. The language in the Notice has been agreed to
12 by the Parties and no language is in dispute. Plaintiffs' counsel have reviewed the Checklist for
13 Approval of Class Action Settlements, "Notice to the Class" to make sure it complies with all
14 required content. (Humphrey Dec. ¶ 54). The Parties assessed the need for Spanish translation based
15 on the demographics of the Settlement Class and PAGA Group and did not feel it was necessary in
16 this case. (Humphrey Dec. ¶ 28)

17 The Notice provides Settlement Class Members everything they need to know in order to
18 make an informed decision, and importantly, will provide the Class Members an estimate of their
19 Individual Settlement Share. (Humphrey Decl., ¶ 26.) It provides an explanation of the proposed
20 Settlement and procedures to object and appear, as is required by California law. *See* Cal. R. Ct.
21 3.769 (f); *Id.* The documentation provides a brief explanation of the case, the exclusion date and
22 procedure for exclusion, the attorneys' fees to be paid, the Class Representative Payment, and the
23 individual Class Members' estimated Settlement Shares, which are all included in the Notice Packet.
24 *Id.* It also states that those who do not request exclusion will be bound by the Settlement. *Id.* Only
25 one notice is being sent (as opposed to a PAGA and Class Notice) because all Class Members are
26 members of the PAGA Group, and Counsel agreed that it was more cost efficient to send one
27 consolidated Notice.

1 Settlement Class Members will have sixty (60) days to request exclusion from the lawsuit.
2 Class Members who receive re-mailed notices will be given an extension for all relevant time
3 periods. (Settlement ¶ 1.38). The Administrator will receive all requests for exclusion and written
4 objections. (Settlement ¶ 2.7.7) Class Members may request exclusion from or “opt out” of the
5 Settlement Class. The Class Notice will provide that Class Members who wish to exclude
6 themselves from the Settlement must mail to the Settlement Administrator a written request for
7 exclusion by the Response Deadline. The written request for exclusion must: (a) state the Class
8 Member’s name, address, telephone number, and last four numbers of their social security number or
9 employee identification number; (b) state the Class Member’s intention to exclude themselves from
10 or opt-out of the settlement (*e.g.*, “I want to exclude myself from this settlement. I also understand
11 that I retain all rights to sue the Defendant for the claims asserted in this lawsuit.”); (c) be addressed
12 to the Settlement Administrator; (d) be signed by the Class Member or his or her lawful
13 representative; and (e) be postmarked no later than the Response Deadline. If a fully completed and
14 properly executed Request for Exclusion is not received by the Settlement Administrator from a
15 Class Member postmarked on or before the Response Deadline, then that Class Member will be
16 deemed to have forever waived his or her right to opt out of the Settlement Class and will become
17 Settlement Class Members. Those portions of the Gross Settlement Amount for Settlement Class
18 Members attributable to Class Members who submit valid Requests for Exclusion will become part
19 of the Net Settlement Amount, distributable to Settlement Class Members. (*Id.*)

20 Class Members may also object to the Settlement Agreement by submitting written objections
21 to the Settlement Administrator no later than the Response Deadline or by appearing at the Final
22 Approval Hearing without having submitted a written objection. The Class Notice will advise Class
23 Members of this option. The Settlement Administrator will provide any such objections to Class
24 Counsel and Defendant’s counsel immediately upon receipt and file the objection with the Court. If
25 the Settlement Administrator is unable to file the objection, it will notify counsel for the Settling
26 Parties and Defendant’s counsel will file the objection with the Court.
27
28

1 Any objections will state: (a) the case name (*Droesch, et al. v. Wells Fargo Bank, N.A.*), and
2 case number (*No. 34-2021-00292066*); (b) the objecting person's or his/her attorney's full name,
3 address, and telephone number; (c) the words "Notice of Objection" or "Formal Objection"; (d)
4 describe, in clear and concise terms, the legal and factual arguments supporting the objection; (e) list
5 identifying witness(es) the objector may call to testify at the Final Approval Hearing; (f) provide true
6 and correct copies of any exhibit(s) the objector intends to offer at the Final Approval Hearing; and
7 (g) state whether the objection applies only to the objector, to a specific subset of the Class, or to the
8 entire Class. Any objection must comply with California Rule of Court 3.769 and California Code of
9 Civil Procedure 902. (Settlement ¶ 2.7.3)

10 Class Members who timely submit valid objections to the settlement may (though are not
11 required to) appear at the Final Approval Hearing, either on their own behalf or through the
12 objector's own counsel. The Class Notice will request that the objector notify the Parties of the
13 objector's intent to appear at the Final Approval Hearing by mailing or filing a Notice of Intent to
14 Appear with the Court by the Response Deadline. **There is no requirement that a Class Member**
15 **submit a written objection or provide notice of intent to appear at the Final Approval Hearing**
16 **in order to state an objection at the Final Approval Hearing. Class members who desire to**
17 **appear at the hearing remotely can join the Court's Zoom link or phone number.**³ (Settlement ¶
18 2.7.4)

19 Thus, Plaintiff respectfully requests that the Court confirm that the suggested Notice of
20 Settlement and other documents constituting the Notice Packet to Class Members are sufficient.

21 **V.**

22 **THE SETTLEMENT IS ENTITLED TO A PRESUMPTION OF FAIRNESS**

23 Courts presume the absence of fraud or collusion in the negotiation of a settlement unless
24 evidence to the contrary is offered. In short, there is a presumption that the negotiations were
25 conducted in good faith. (*Newberg*, §11.51; *In re Chicken Antitrust Litigation*, 560 F. Supp. 957, 962
26 _____)

27 ³ Plaintiffs' counsel wants to confirm the Zoom link information and department this motion will
28 be heard in prior to insertion in the Notice.

(N.D. Ga. 1980); *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars Steel Corp. v. Continental Illinois National Bank and Trust Co.*, 834 F.2d 677, 682 (7th Cir. 1987).) Courts do not substitute their judgment for that of the proponents, particularly where, as here, settlement has been reached with the participation of experienced counsel familiar with the litigation and a professional mediator. (*Hammon v. Barry*, 752 F. Supp. 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y. 1979); *In re Armored Car Antitrust Litigation*, 472 F.Supp. 1357 (N.D. Ga. 1979), *aff'd in part, rev'd in part* in 645 F.2d 488 (5th Cir. 1981).)

While the recommendations of counsel proposing the settlement are not conclusive, the Court can properly take them into account, particularly where, as here, they have been involved in litigation for some period of time, appear to be competent, have experience with this type of litigation, and have obtained substantial evidence from the opposing party. (*See Newberg*, §11.47.) Here, the Class Counsel involved in the case has a great deal of experience in wage and hour class action litigation. Both Christina A. Humphrey and Marcus J. Bradley have been approved as Class Counsel in numerous other wage and hour class actions. Humphrey Decl., ¶¶ 3-8; Declaration of Marcus J. Bradley, in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement and Provisional Class Certification ("Bradley Decl."), ¶¶ 1-8.

Thus, based upon such experience and knowledge of the current case, all set forth in Section III.c. *supra*, Plaintiffs' counsel believe that the current Settlement is fair, reasonable and adequate.

VI.

THE SETTLEMENT IS FAIR AND REASONABLE BASED UPON OBJECTIVE EVIDENCE

A. The Applicable Law

The Settlement is fair, reasonable and adequate for the reasons stated above and as stated in the accompanying declarations. *See* Humphrey Decl., Ex. A, ¶¶ 19-21, 24-25, and 36-48. The Settlement that has been reached, subject to this Court's approval, is the product of tremendous effort, and a great deal of expense by the parties and their counsel. The settlement amount is, of course, a compromise figure. Plaintiffs took into account the risks that the class would not be

1 certified, risks related to proof of damages, and the strengths and weaknesses of Defendant's other
2 defenses. Plaintiffs also took into account the possibility that if a settlement were reached after
3 additional years of litigation, the great expenses and attorneys' fees of litigation would likely reduce
4 the amount of funds available to the class. Furthermore, Plaintiffs also took into consideration the
5 time delay and financial repercussions of trial and the possibility of an appeal by Defendant.

6 To assess the fairness, adequacy and reasonableness of a class action settlement, the Court
7 must weigh the immediacy and certainty of substantial settlement proceeds against the risks inherent
8 in continued litigation. *See In re General Motors Corp.*, 55 F.3d 768, 806 (3d Cir. 1995) ("present
9 value of the damages plaintiffs would likely recover if successful, appropriately discounted for the
10 risk of not prevailing, should be compared with the amount of the proposed settlement."); *see also*
11 *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 616-17
12 (N.D. Cal. 1979). "A settlement need not obtain 100 percent of the damages sought in order to be fair
13 and reasonable." *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 250-51 (2001); *see also*
14 *Rebney v. Wells Fargo Bank*, 220 Cal. App. 3d 1117, 1139 (1990) (finding settlements to be fair and
15 reasonable even though monetary relief provided was "relatively paltry"); *City of Detroit v. Grinnell*
16 *Corp.*, 495 F.2d 448, 455 (2d Cir. 1974) (approving settlement that amounted to only "a fraction of
17 the potential recovery"). "Compromise is inherent and necessary in the settlement process. Thus,
18 even if 'the relief afforded by the proposed settlement is substantially narrower than it would be if the
19 suits were to be successfully litigated,' this is no bar to a class settlement because 'the public interest
20 may indeed be served by a voluntary settlement in which each side gives ground in the interest of
21 avoiding litigation.'" *Wershba*, 91 Cal. App. 4th at 251 (citing *Air Line Stewards, etc., Local 550 v.*
22 *American Airlines, Inc.*, 455 F.2d 101, 109 (7th Cir. 1972)).

23 In addition, the Court must perform an analysis as set forth in *Kullar v. Foot Locker Retail,*
24 *Inc.* (2008) 168 Cal. App. 4th 116, 120, 129, 132; *Clark v. American Residential Services LLC* (2009)
25 175 Cal. App. 4th 785; *Munoz v. BCI Coco-Cola Bottling Company of Los Angeles* (2010) 186
26 Cal.App. 4th 399; *Nordstrom Commission Cases* (2010) 186 Cal. App. 4th 576, to "ensure that the
27 recovery represents a reasonable compromise" by providing "an understanding of the amount that is
28

1 in controversy and the realistic range of outcomes of the litigation...” through submission of “data. . .
2 that will enable the court to make an independent assessment of the adequacy of the settlement
3 terms.” (*Kullar, supra*, 168 Cal.App. 4th at p. 129.)

4 **B. The *Kullar* Analysis**

5 As discussed in the Humphrey Dec., ¶36, the value of this case diminished with time and
6 further investigation. First, it came to light that (1) Wells Fargo had instituted measures that
7 ameliorated many of the off-the-clock issues raised in the complaint, therefore significantly
8 narrowing the scope of time at issue; (2) Wells Fargo instituted an arbitration clause with a class
9 action waiver which would have excluded many claims from being made on a class wide basis
10 because of the US Supreme Court decision in *Epiq Systems Corporation v. Lewis* (2018) 584 U.S.
11 497; (3) Wells Fargo then moved to compel arbitration of the PAGA case after the US Supreme
12 Court decided *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639, and complicated legal
13 issues arose from arbitration; (4) Plaintiffs’ allegations for failure to pay meal and break premiums at
14 the regular rate were settled and released in 2022 in the case *Simon v. Wells Fargo Bank, National*
15 *Association*, Los Angeles Superior Court No. 19STCV42777, as to all non-exempt Wells Fargo
16 employees; (5) this Court stayed pursuit of Labor Code 2802 claims based on the doctrine of
17 exclusive concurrent jurisdiction in *Scorby et. al. v. Wells Fargo Bank, N.A.*, Marin County Superior
18 Court No. CIV 2100758, which alleged claims for failure to reimburse for business expenses such as
19 internet and cell phone usage (those claims are NOT alleged in the SACC and are NOT being
20 released herein); and (6) the class period was already restricted by earlier nationwide settlements in
21 cases with the same allegations, *Harris, et al. v. Wells Fargo Bank, N.A.* (CV-17-01146-PHX-DMF),
22 consolidated with *Kerness v. Wells Fargo Bank, N.A.*, CV-17-02516-PHX-DMF); and *Singer, et al.*
23 *v. Wells Fargo Bank, N.A.*, (W.D. Tex. Case No. 5:19-cv-00679). The class period released herein
24 does not overlap with those prior settlements.

25 Here, Plaintiff’s counsel estimates that the total amount of damages, monetary penalties, and
26 other relief (non-PAGA) that the class would be awarded if the action were successful at trial on all
27 its claims is approximately \$557,000. (This entire analysis is set forth in the Humphrey Dec. ¶¶ 39-
28

42). Plaintiffs' off-the-clock claims were for time spent logging in and out of computers at the beginning and end of the workday. However, Wells Fargo instituted a grace period during the Class Period that compensated Settlement Class Members for time spent doing so before they could clock in. As a result, according to a statistical sample of available data analyzed by Plaintiff's expert, the damages for these claims were minimal, less than 0 in many instances and at most 5 minutes. The total estimated damages calculated by Plaintiff's expert based on the statistical sample was \$139,000 (the calculation is set forth in a very complicated spreadsheet and is not submitted herein). (Humphrey Dec. ¶ 40)

As for meal and rest breaks, most employees testified that they received meal and rest breaks per Wells Fargo's schedule, but occasionally they claimed that they occasionally performed some work during these breaks. Plaintiff's expert ran a sampling comparison between clocked out times and computer work and estimated damages at approximately \$418,000, some of which was offset by premiums already paid (again, this information is set forth in a rather complicated spreadsheet). Further, Plaintiffs' counsel estimates that the total amount of damages, monetary penalties, and other relief that the class could reasonably expect to be awarded at trial, taking into account the likelihood of prevailing and other attendant risks is minimal, given the measures instituted by Wells Fargo after prior litigation to ameliorate off-the-clock, meal, and rest break claims.

As such, the agreed-upon recovery of \$385,000.00 pursuant to the Settlement is fair, adequate, and reasonable when viewed in terms of the risks avoided by the Settlement. The Settlement's value would be approximately 70% of all damages and penalties owed. Although Plaintiffs believe that all the legal defenses are class-wide defenses that would lead to certification of the Class and would ultimately be decided in favor of the Class, Defendant would contend that these legal defenses provide for no or minimal liability, even if the facts were as Plaintiffs suggest. There is a chance of a complete defense in the event the case continues to be litigated. The Settlement in this case is therefore consistent with the "overriding public interest in settling and quieting litigation" that is "particularly true in class action suits." *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976); see also 4 *Newberg on Class Actions* at § 11.41.

1 **C. Individual Settlement Shares**

2 Assuming net settlement of \$56,400, each Class Member will receive on average
3 approximately \$.13 per work week (\$56,400/408,243 workweeks) after deductions for attorneys'
4 fees, litigation costs, administration costs, LWDA payment, and Class Representative Payment.
5 For class members that may have worked the entire class period would recover \$37.05 (.13 x
6 285 max work weeks). These amounts shall be definitively calculated by the Settlement
7 Administrator once this Court enters an order preliminarily approving of this Settlement.
8 (Humphrey Dec. ¶ 44)

9 **D. PAGA Settlement Valuation**

10 This Court must also conduct an analysis consistent with that discussed in *Moniz v.*
11 *Adecco USA, Inc.* (2021) 72 Cal.App.5th 56. Based on the random sampling viewed by
12 Plaintiff's expert, the PAGA penalties were estimated to be approximately \$220,000, which
13 would have been subject to reduction by a Court. Given the remedial measures instituted by
14 Wells Fargo to address the issues raised in the complaint, there was a high chance a reduction
15 may have been given. The Parties have agreed to allocate Forty Thousand Dollars (\$40,000.00)
16 (the "PAGA Payment") for penalties pursuant to PAGA, of which Seventy-five percent (75% or
17 \$30,000.00) of the PAGA Settlement Amount shall be paid to the LWDA and twenty-five
18 percent (25% or \$10,000.00) of the PAGA Settlement Amount shall be distributed pro rata to
19 PAGA Group Members. A larger amount of \$40,000 (or 18% of the potential recovery of
20 \$220,000) was allocated to the PAGA portion of the settlement because the stronger claims were
21 the PAGA claims given class certification was not a hurdle nor arbitration (to a certain extent).
22 The amount distributed to PAGA Group Members will be distributed based on workweeks and
23 no group will be receiving more than another. (Humphrey Dec. ¶45-47).

24 **E. Individual PAGA Shares**

25 Assuming \$10,000 for distribution to PAGA Group members, each PAGA member will
26 receive on average approximately \$.06 per pay period (\$10,000/166,402 pay periods) after
27 deductions for attorneys' fees, litigation costs, administration costs, LWDA payment, and Class
28

1 Representative Payment. PAGA group members that may have worked the entire PAGA period
2 would recover \$17.12 (.06 x 285 pay periods). These amounts shall be definitively calculated
3 by the Settlement Administrator once this Court enters an order preliminarily approving of this
4 Settlement. (Humphrey Dec. ¶ 48).

5 VII.

6 CLASS REPRESENTATIVES' PAYMENTS

7 Class Counsel believes that the Class Representative Payments per Representative are fair and
8 reasonable. In this case, Plaintiff Kyonna Harrison will receive \$5,000⁴; and Plaintiffs Janisha Lee
9 Price and Denise Droesch will receive \$2,500 each. (Settlement at ¶¶ 1.14) The declarations of each
10 Plaintiff are submitted herewith and detail their unusually extensive involvement in the long
11 litigation.

12 Incentive awards are fairly typical in class actions.” *Cellphone Termination Fee Cases*, 186
13 Cal. App. 4th 1380, 1393 (2010) (internal quotation marks and citations omitted). The Class
14 Representatives have signed a general release for all claims related to his employment with
15 Defendant so they cannot pursue any other potential claims. (Humphrey Decl., ¶ 44) Ms. Harrison, a
16 current employee, agreed to additional terms moving forward in her employment. (*Id.*) Likewise, the
17 Class Representatives initially informed our office of the policies and procedures of Defendant at
18 issue. (*Id.*) They have spent substantial time and energy in assisting with this wage and hour class
19 action including having their depositions taken, answering extensive discovery, producing numerous
20 documents, providing multiple declarations, and assisting in the investigation (*Id.*) They have been
21 diligent and acted above and beyond that of which is expected of a class representative and provided
22 the work, diligence, loyalty and willingness to assume a substantial risk should Defendant prevail in
23 this case. (*Id.*) Moreover, Plaintiffs put their names forward on the public record at the risk of
24 possible future adverse employment consequences by future or potential employers who might not

25
26 ⁴ Ms. Harrison, who continues to be employed by Wells Fargo, received a separate individual
27 settlement payment of \$5,000 individual in exchange for a release of all her employment claims
28 against Wells Fargo. She presents unique circumstances not experienced by the other two
Plaintiffs and agreed to additional terms. (Harrison Dec. para. no. 7)

1 choose to hire them because they took the lead in this lawsuit. (*Id.*) This is a significant risk that the
2 Class Representatives has borne for the Class Members who have reaped the benefits of this case
3 without having to face these risks personally. (*Id.*) As such, Class Counsel believes that the Class
4 Representative Payments of \$5,000 to Plaintiff Kyonna Harrison, and of \$2,500 to Plaintiffs Janisha
5 Lee Price and Denise Droesch each are fair and reasonable. (*Id.*)

6 VIII.

7 ATTORNEY FEES AND COSTS

8 In the present case, Class Counsel is requesting an award of not more than \$134,750.00 (35%)
9 for attorneys' fees and no more than \$120,000 in costs. (Humphrey Decl., ¶¶ 50-51) Class Counsel's
10 lodestar of 2000 hours will far exceed the requested fee award. Class Counsel believe this is
11 appropriate as "California courts have consistently held that a computation of time spent on a case
12 and the reasonable value of that time is fundamental to a determination of an appropriate attorneys'
13 fee award." *Margolin v. Regional Planning Com.*, 134 Cal.App.3d 999, 1004–1005 (1982). An
14 itemization of costs is set forth in the Declarations of Humphrey (¶ 51), Bradley (¶ 10).⁵

15 IX.

16 CONDITIONAL CLASS CERTIFICATION IS APPROPRIATE

17 As part of the settlement, the Parties have agreed to conditionally certify this case as a class
18 action. This case meets the requirement for conditional certification pursuant to California Code of
19 Civil Procedure Section 382.

20 A. Ascertainability and Numerosity

21 Class Members are defined as follows:

22 The Settlement proposes the following Class: "All non-exempt persons current and former
23 California non-exempt hourly telephone bankers employed by Defendant who worked at any time
24 during the Class Period, which means the period from December 12, 2018 through the date of the
25 Preliminary Approval Order." (Settlement ¶ 1.1)

26
27 ⁵ Ms. Gessner, co-counsel for the class action, is in trial right now and unable to provide a
breakdown of costs but previously provided an estimate of \$7,300.

1 The Parties currently estimate that there are 4,178 Class Members. (Humphrey Dec. ¶ 24)
2 The number satisfies the numerosity requirements in California pursuant to California Code of Civil
3 Procedure Section.

4 **B. Common Questions of Law and Fact Predominate**

5 Plaintiff believes that there are common questions of law and fact as to the Class which
6 predominate over questions affecting only individual members including, without limitation to:

7 a. whether Plaintiff and the members of the Putative Class are subject to and entitled to the
8 benefits of California wage and hour statutes;

9 b. whether Defendant required, encouraged, suffered, or permitted Plaintiff and the members
10 of the Putative Class to perform certain work-related duties without compensation equal to at least the
11 California minimum wage;

12 c. whether Defendant required, encouraged, suffered, or permitted Plaintiff and the members
13 of the Putative Class to perform certain work-related duties without compensation at the designated
14 rate;

15 d. whether Plaintiff and the members of the Putative Class are entitled to overtime
16 compensation for certain work-related duties that were not compensated;

17 f. whether Defendant had a policy and practice of failing to provide Plaintiff and the
18 members of the Putative Class meal and rest breaks;

19 g. whether Defendant had a policy and practice of failing to compensate Plaintiff and the
20 members of the Putative Class for missed, short, on duty, or late meal and rest breaks at the regular
21 rate;

22 h. whether Defendant's policy and practice of not providing, and/or compensating Plaintiff
23 and the members of the Putative Class for meal and rest breaks violated California wage and hour
24 law;

25 i. whether the nature of the work of Plaintiff and members of the Putative Class prevented
26 them from taking meal breaks;

1 j. whether Defendant unlawfully and/or willfully failed to provide Plaintiff and the members
2 of the Putative Class with true and proper wage statements upon payment of wages, in violation of
3 Labor Code § 226;

4 k. whether Defendant unlawfully and/or willfully failed to promptly pay compensation owing
5 to Plaintiff and the members of the putative Former Employee Sub-class upon termination of their
6 employment, in violation of Labor Code §§ 201-203;

7 l. whether Plaintiff and members of the Putative Class sustained damages, and if so, the
8 proper measure of such damages, as well as interest, penalties, costs, attorneys' fees, and equitable
9 relief; and

10 m. whether Defendant's conduct as alleged herein violates the Unfair Business Practices Act
11 of California, Bus. & Prof. Code § 17200, et seq.

12 Plaintiffs assert that there are no individualized factual or legal issues for the Court to resolve
13 that would prevent this case from proceeding as a class action. (Humphrey Dec. ¶ 33)

14 **C. The Class Representative Is Typical and Adequate**

15 The "Class Representatives" or "Plaintiffs" mean Denise Droesch, Kyonna Harrison, and
16 Janisha Lee Price. (Settlement ¶ 1.7).

17 The claims of the Class Representatives are typical of the Class Members. (Humphrey Decl.,
18 ¶ 35). The proposed Class Representatives are adequate because they will adequately and fairly
19 represent the Class and will not place their interests above any Member of the Class. (*Id.*) The Class
20 Representatives worked during the relevant time periods in this case and were subjected to the same
21 policies and procedures and labor violations as all other Putative Class Members they seek to
22 represent. (*Id.*)

23 **X.**

24 **ACTION REQUESTED AS PART OF THE MOTION FOR PRELIMINARY APPROVAL**

25 The parties request this court, as part of the preliminary approval process, to do the following:

- 26 1. Review the proposed Settlement Agreement;
- 27 2. Provisionally certify for settlement purposes only the class listed above;

3. Confirm Christina Humphrey, Esq. of Christina Humphrey Law, PC, as Class Counsel, Marcus J. Bradley of Bradley/Grombacher, LLP as Class Counsel, Denise Droesch, Kyonna Harrison, and Janisha Lee Price as Class Representatives;
4. Approve an order granting preliminary approval of the proposed settlement on a class basis, direct notice to be given to the class, and setting a hearing for final review of the proposed settlement at a date/time convenient for the Court.
5. Approve Rust Consulting, Inc. as claims administrator to handle the notice and claims procedures as set forth in its proposal.

XI.

CONCLUSION

Based upon the foregoing, counsel respectfully requests that the court grant this motion for preliminary approval and enter the proposed order.

Dated: October 4, 2024

BRADLEY/GROMBACHER, LLP
CHRISTINA HUMPHREY LAW, P.C

By: /s/ Christina A. Humphrey

Marcus J. Bradley
Kiley L. Grombacher
Corey S. Smith
Christina A. Humphrey

Attorneys for Plaintiffs