

Joseph Lavi, Esq. (SBN 209776)
Vincent C. Granberry, Esq. (SBN 276483)
Melissa A. Huether, Esq. (SBN 316604)
Danielle E. Montero, Esq. (SBN 333945)

LAVI & EBRAHIMIAN, LLP

8889 W. Olympic Blvd., Suite 200

Beverly Hills, California 90211

Telephone: (310) 432-0000

Facsimile: (310) 432-0001

Email: jlavi@lelawfirm.com

vgranberry@lelawfirm.com

mhuether@lelawfirm.com

dmontero@lelawfirm.com

wht2@lelawfirm.com

Attorneys for Plaintiff ANDREW LEDESMA,
on behalf of himself and others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES—SPRING STREET COURTHOUSE**

ANDREW LEDESMA, on behalf of himself
and others similarly situated,

Plaintiff,

vs.

PARKS COFFEE CALIFORNIA, INC.;
PROSTAR SERVICES, INC. d/b/a PARKS
COFFEE; and DOES 1 to 100, inclusive,

Defendants.

Case No.: 21STCV17082

CLASS ACTION

*[Assigned for All Purposes to:
Hon. Yvette M. Palazuelos, Dept. SSC Dept. 9]*

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

*[Filed concurrently with the Declaration of
Melissa A. Huether in Support; and [Proposed]
Order]*

Hearing Information:

Date: June 1, 2023

Time: 10:00 a.m.

Dept.: SSC9

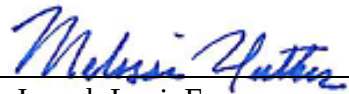
1 **TO THE HONORABLE COURT, ALL PARTIES, AND TO THEIR RESPECTIVE**
2 **ATTORNEYS OF RECORD:**

3 **NOTICE IS HEREBY GIVEN** that on June 1, 2023, at 10:00 a.m., or as soon thereafter as
4 the matter can be heard in Department SSC9 of the Los Angeles County Superior Court located at
5 312 N. Spring St., Los Angeles, California 90012, Plaintiff Andrew Ledesma (“Plaintiff”) will
6 move for an order granting preliminary approval of the proposed class action settlement on the
7 terms and conditions set forth in the Class Action and PAGA Settlement Agreement (“Settlement”
8 or “Settlement Agreement”)) between Plaintiff and Defendants Parks Coffee California, Inc. and
9 Prostar Services, Inc. d/b/a/ Parks Coffee (“Defendant” or “Defendants”), a copy of which is
10 attached to the Declaration of Melissa A. Huether (“Huether Dec.”) as **Exhibit “1.”** Plaintiff will
11 further move that the Order specifically encompass the following:

- 12 1. Certify the California Class for settlement purposes only;
- 13 2. Certify the FCRA Class for settlement purposes only;
- 14 3. Appoint the Plaintiff as Class Representative for settlement purposes only;
- 15 4. Appoint Joseph Lavi, Esq., Vincent C. Granberry, Esq., Melissa A. Huether, Esq.,
16 and Danielle E. Montero of Lavi & Ebrahimian, LLP as Class Counsel;
- 17 5. Approve the Class Notice in the form attached as **Exhibit “A”** to the Settlement;
- 18 6. Set a Final Approval and Settlement Fairness Hearing on a date that is approximately
19 150 days after the Court grants preliminary approval of the Settlement.

20
21 Dated: January 17, 2023

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

22
23 By: 
24 Joseph Lavi, Esq.
25 Vincent C. Granberry, Esq.
26 Melissa A. Huether, Esq.
27 Attorneys for Plaintiff Andrew Ledesma and
28 Other Class Members

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I. INTRODUCTION 1

II. SUMMARY OF LITIGATION..... 1

 A. The Parties..... 1

 B. The Complaint and Allegations 2

 C. The Exchange of Detailed Informal Discovery and Legal Analysis By
 Parties’ Counsel 3

 D. Summary of Relevant FCRA Law 4

 1. FCRA..... 4

 2. ICRAA..... 5

 3. CCRAA 6

 E. The Disclosure Forms At Issue 7

III. THE SETTLEMENT 8

IV. ANALYSIS..... 11

 A. Class Action Settlements Are Subject To Review And Approval Under The
 California Rules of Court 11

 B. This Settlement Is Fair, Reasonable, And Adequate..... 11

 1. The settlement is the result of serious, informed, and non-collusive
 negotiations..... 13

 2. The extent of the information provided through formal and informal
 discovery and the stage of the proceedings support the settlement..... 13

 3. Plaintiff’s counsel are experienced in similar litigation 14

 4. The settlement is fair and reasonable based on the strengths of
 Plaintiff’s case and the risks and costs of further litigation..... 15

 5. The proposed settlement is a reasonable compromise of claims..... 15

V. THE COURT SHOULD CERTIFY THE CLASS FOR SETTLEMENT
PURPOSES..... 27

VI. THE PROPOSED CLASS NOTICE OF SETTLEMENT SHOULD BE
APPROVED 29

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VII. THE PROPOSED ATTORNEY FEES AND COSTS ARE REASONABLE..... 29

VIII. THE REQUESTED SERVICE PAYMENT IS REASONABLE 32

IX. PROPOSED SCHEDULE OF SETTLEMENT PROCEEDINGS..... 32

X. CONCLUSION..... 33

TABLE OF AUTHORITIES

	Cases	Pages
1		
2		
3	<i>In re Activision Sec. Litig.</i>	
4	(N.D. Cal 1989)] 723 F. Supp. 1373	17
5	<i>Apple Computer, Inc. v. Superior Court</i>	
6	(2005) 126 Cal. App. 4th 1253.....	16
7	<i>In re Beef Industry Antitrust Litigation</i> (5th Cir. 1979) 607 F.2d 167	
8	(1985) 39 Cal.3d 311	7
9	<i>Boyd v. Bechtel Corp.</i>	
10	(N.D. Cal. 1979) 485 F. Supp. 610	9, 10
11	<i>City & County of San Francisco v. Sweet</i>	
12	(1995) 12 Cal. 4th 105.....	16, 17
13	<i>Dunk v. Ford Motor Co.</i>	
14	(1996) 48 Cal.App.4th 1794.....	8
15	<i>Ellis v. Naval Air Rework Facility</i>	
16	(N.D. Cal. 1980) 87 F.R.D. 15	10
17	<i>Fisher Bros. v. Cambridge Lee Industries, Inc.</i>	
18	(E.D. Pa. 1985) 630 F.Supp. 482	10
19	<i>Gilberg v. California Check Cashing Stores, LLC</i> (9th Cir. 2019)	
20	913 F.3d 1169.2.....	5
21	<i>Global Minerals & Metals Corp. v. Superior Court</i>	
22	(2003) 113 Cal.App.4th 836.....	12, 14
23	<i>Hanlon v. Chrysler Corp.</i>	
24	(9 th Cir. 1998) 150 F.3d 1011	8
25	<i>Iowa Beef Processors, Inc. v. Meat Price Investigators Ass'n</i>	
26	(1981) 452 U.S. 905	7
27	<i>Kullar v. Foot Locker Retail, Inc.</i>	
28	(2008) 168 Cal.App.4th 116.....	11
	<i>Lealao v. Beneficial California, Inc.</i>	
	(2000) 82 Cal. App. 4th 19.....	16, 17
	<i>Linney v. Cellular Alaska Partnership</i>	
	(9th Cir. 1998) 151 F. 3d 1234.....	11

1	<i>Mallick v. Superior Court</i>	
2	(1979) 89 Cal.App.3d 434.....	8
3	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i>	
4	(2010) 186 Cal.App.4th 399.....	11
5	<i>In re Pacific Enters. Sec. Litig.</i>	
6	(9th Cir. 1995) 47 F.3d 373.....	17
7	<i>Quinn v. State</i>	
8	(1975) 15 Cal. 3d 162.....	16
9	<i>Rebney v. Wells Fargo Bank</i>	
10	(1990) 220 Cal.App. 3d 1117.....	11
11	<i>Rubio v. Capital One Bank</i> (9th Cir. 2010)	
12	613 F.3d 1195, 1200.	7
13	<i>Syed v. M-I, LLC</i> (9th Cir. 2017)	
14	853 F.3d 492.....	4,22,25
15	<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i>	
16	(2000) 85 Cal.App.4th 1135.....	14
17	<i>Wershba v. Apple Computer, Inc.</i>	
18	(2001) 91 Cal.App.4th 224.....	12
19	Statutes and Rules	
20	California Labor Code	
21	201.....	2
22	202.....	2
23	203.....	2
24	226.....	2
25	226.7.....	2
26	2698.....	2
27	California Rules of Court	
28	Rule 3.769.....	7
	Rule 3.769(d).....	12, 14

1	Rule 3.769(g).....	7
2	California Code of Civil Procedure	
3	§382	8, 27
4	§1785.1(b).....	6
5	§1785.20.5(a)	6
6	§1786.2(c)	6
7	§1786.16(a)(2)(B)	6, 7
8	§1786.16(b)(1)	6
9	§1786.50(a)	25
10	§1786.52(b).....	25
11	United States Code	
12	15 U.S.C. § 168.....	4
13	15 U.S.C. § 1681b(b)	4
14	15 U.S.C. § 1681b(b)(2)(A)(i)	4
15	15 U.S.C. § 1681b(b)(2)(A)(ii)	4, 5
16	15 U.S.C. § 1681c(a)(2)	23
17	15 U.S.C. § 1681e(b)	22
18	15 U.S.C. § 1681i.....	23
19	15 U.S.C. § 1681n(a)(1)(A)	4
20		
21		
22	Other	
23	Newberg on Class Actions (4 th Ed.)	
24	§ 11:25.....	8, 17
25	§ 14.6.....	17
26		
27		
28		

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Andrew Ledesma (“Plaintiff”) respectfully submits this memorandum of points and authorities in support of his motion for preliminary approval of the proposed class action settlement with Defendants Parks Coffee California, Inc. and Prostar Services, Inc. d/b/a/ Parks Coffee (“Defendant” or “Defendants”) (Plaintiff and Defendant are collectively hereinafter referred to as “the Parties”). Plaintiff seeks entry of a proposed order granting preliminary approval of the class settlement which: (1) preliminarily approves the proposed settlement of the class action; (2) approves the form and method for providing notice and directs that notice be given to members of the settlement class; (3) preliminarily certifies the settlement class for settlement purpose; and (4) schedules a final approval hearing date.

As consideration for this Settlement, Defendant shall pay a sum equal to Eight Hundred Fifty Thousand Dollars (\$850,000.00) (the “Gross Settlement Amount”) to fund the non-reversionary, no claims made settlement of this class action. (Class Action and PAGA Settlement Agreement (“Settlement” or “Settlement Agreement”)), § 1.25 attached as **Exhibit “1”** to Declaration of Melissa A. Huether (“Huether Decl.”). The Gross Settlement Amount is inclusive of Individual FCRA Payments, Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment, and the Administrator’s Expenses as provided by this Settlement. (*Id.*)

II. SUMMARY OF LITIGATION

A. The Parties

The named Plaintiff worked as an hourly-paid, non-exempt driver/salesperson of Defendant and seeks to represent approximately 132 individuals who are or previously were employed by Defendant in California who were classified as hourly, non-exempt employees during the California Class Period (hereinafter “California Class” or “California Class Members”). Plaintiff also seeks to represent 143 individuals in California that had their background checked by Defendant during the FCRA Class Period, as alleged in Case No. 21STCV18204 (“FCRA Class Member” or “FCRA Class”). (Huether Dec. ¶3.)

1 **B. The Complaint and Allegations**

2 This is a proposed employee wage and hour class action case and FCRA case. On May 5,
3 2021, Plaintiff commenced the California Class Action by filing a Complaint alleging causes of
4 action against Defendant for (1) failure to pay wages for all hours worked at minimum wage; (2)
5 failure to pay overtime wages for daily overtime worked; (3) failure to authorize or permit meal
6 periods and pay meal period premiums; (4) failure to authorize or permit rest periods and pay rest
7 period premiums; (5) failure to timely pay earned wages during employment; (6) failure to provide
8 complete and accurate wage statements; (7) failure to timely pay all earned wages and final
9 paychecks due at time of separation of employment; and (8) unfair business practices. Defendant
10 has denied all claims in the wage and hour class action. (Huether Dec. ¶4.)

11 On May 5, 2021, Plaintiff also submitted a notice to the LWDA informing it of his intention
12 to bring a claim for civil penalties pursuant to PAGA. (Huether Dec. ¶5.)

13 On May 14, 2021, Plaintiff filed a separate Complaint for violations of the following based on
14 Defendant's background checks: (1) Fair Credit Reporting Act; (2) Investigative Consumer
15 Reporting Agencies Act; (3) Consumer Credit Reporting Agencies Act; and (4) Unfair Competition.
16 (Huether Dec. ¶6.)

17 On August 17, 2021, Plaintiff filed a separate lawsuit against Defendant for civil penalties
18 pursuant to PAGA. (Huether Dec. ¶7.)

19 On May 12, 2022, after extensive informal discovery and data exchange, the Parties attended
20 a mediation session with Lynn Frank, Esq., a well-respected mediator experienced in mediating
21 complex actions. After a full day of arm's-length negotiations, the Parties reached an agreement
22 which was later memorialized in a Memorandum of Understanding. (Huether Dec. ¶8.)

23 On August 11, 2022, Plaintiff filed a First Amended Complaint alleging causes of action
24 against Defendant for (1) failure to pay wages for all hours worked at minimum wage; (2) failure to
25 pay overtime wages for daily overtime worked; (3) failure to authorize or permit meal periods and
26 pay meal period premiums; (4) failure to authorize or permit rest periods and pay rest period
27 premiums; (5) failure to timely pay earned wages during employment; (6) failure to provide
28 complete and accurate wage statements; (7) failure to timely pay all earned wages and final

1 paychecks due at time of separation of employment; (8) PAGA; (9) Fair Credit Reporting Act; (10)
2 Investigative Consumer Reporting Agencies Act; (11) Consumer Credit Reporting Agencies Act;
3 (12) unfair business practices/unfair competition. The First Amended Complaint is the operative
4 complaint in the Action (the “Operative Complaint”). Defendant denies the allegations in the
5 Operative Complaint, denies any failure to comply with the laws identified in the Operative
6 Complaint and denies any and all liability for the causes of action alleged. (Huether Dec. ¶9.)

7 **C. The Exchange of Detailed Informal Discovery and Legal Analysis by the**
8 **Parties’ Counsel**

9 On May 12, 2022, the Parties participated in a full-day mediation session with Lynn Frank,
10 Esq., a highly experienced and well-regarded class action mediator. As a critical part of settlement
11 negotiations, the Parties engaged in extensive informal discovery exchange where Plaintiff’s
12 counsel and Plaintiff’s counsel’s expert reviewed and analyzed the following: (1) the total number
13 of current and former putative class members and aggrieved employees who worked during the
14 relevant time periods; (2) the total number of workweeks at issue during the relevant time periods;
15 (3) the total number of pay periods at issue during the relevant time periods; (4) the average hourly
16 rate for the putative class members; (5) relevant policy documents and correspondence (including
17 but not limited to meal and rest break policies and correspondence); (6) number of individuals who
18 had their had their background checked by Defendant; and (7) other relevant information, including
19 Plaintiff’s personnel file, wage statements, and time records. (Huether Dec. ¶10.)

20 Counsel for the Parties have investigated the law as applied to the facts discovered regarding
21 the alleged claims of Plaintiff and potential defenses thereto, and the potential damages claimed by
22 Plaintiff, and multiple conference calls and email exchanges between Plaintiff’s counsel and
23 Defendant’s counsel. (Huether Dec. ¶¶8-10.)

24 Plaintiff and Class Counsel recognize the expense and length of continued proceedings
25 necessary to litigate their disputes through trial and through any possible appeals. (*Id.*) Plaintiff has
26 also taken into account the uncertainty and risk of the outcome of further litigation, and the
27 difficulties and delays inherent in such litigation. (*Id.*) Plaintiff and Class Counsel are also aware of
28 the burdens of proof necessary to establish liability for the claims asserted in the Action, both

1 generally and in response to Defendant’s compelling defenses thereto, and the difficulties in
2 establishing damages for the Class Members. (*Id.*) Based on the foregoing, Plaintiff and Class
3 Counsel have determined that the Settlement set forth in this Agreement is a fair, adequate and
4 reasonable settlement, and is in the best interests of the Class Members. (*Id.*)

5 Defendant denies the allegations in the Operative Complaint, denies any failure to comply
6 with the laws identified in the Operative Complaint and denies any and all liability for the causes of
7 action alleged. (Settlement, § 2.1.) Defendant contends that it complied in good faith with wage and
8 hour laws and has dealt legally and fairly with Plaintiff and putative class members. (*Id.*)

9 **D. Summary of Relevant FCRA Law**

10 **1. FCRA**

11 The FCRA, 15 U.S.C. section 1681b(b), requires employers to use certain documents and to
12 follow specified policies and practices when they obtain “consumer reports” to assess the
13 qualifications of prospective and current employees.

14 Pursuant to section 1681b(b) of the FCRA, no person can obtain a consumer report for
15 employment purposes without providing a “clear and conspicuous disclosure . . . in a document that
16 consists solely of the disclosure.” 15 U.S.C. § 1681b(b)(2)(A)(i). The person obtaining the
17 consumer report must also obtain the consumer’s written authorization which can be done as part of
18 the disclosure form. 15 U.S.C. § 1681b(b)(2)(A)(ii). A plaintiff may be entitled to statutory and
19 punitive damages when a defendant has willfully violated the provisions of the FCRA. 15 U.S.C. §
20 1681n(a)(1)(A): “any person who willfully fails to comply with any requirement imposed under this
21 subchapter with respect to any consumer is liable to that consumer in an amount equal to the sum of
22 . . . damages of not less than \$100 and not more than \$1000 . . . [and] such amount of punitive
23 damages as the court may allow.”

24 In 2017, the Ninth Circuit issued a major decision on the issue of violation of the standalone
25 disclosure requirement of the FCRA. *Syed v. M-I, LLC* (9th Cir. 2017) 853 F.3d 492. In *Syed*, the
26 FCRA disclosure contained a term purporting to waive any liability of the employer related to the
27 background check. *Id.* at 498. The Ninth Circuit held that under the plain language of the FCRA the
28 required disclosure must be in “a document that consists solely of the disclosure” and that the

1 inclusion of the liability release was impermissible: “We must begin with the text of the statute.
2 Where congressional intent has been expressed in reasonably plain terms, that language must
3 ordinarily be regarded as conclusive.... The ordinary meaning of ‘solely’ is ‘[a]lone; singly’ or
4 entirely exclusively.” *Id.* at 500. The Ninth Circuit also held that due to the clarity of the statutory
5 language requiring that the disclosure be in a document consisting “solely” of the disclosure: “a
6 prospective employer’s violation of the FCRA is “willful” when the employer includes terms in
7 addition to the disclosure.” *Id.* at 496.

8 Put in simplest terms, “solely” means just what it appears to mean, and, in Plaintiff’s view
9 no implied exceptions to the “solely” requirement should be judicially added to the *one* express
10 exception allowing the authorization to accompany the correct disclosure. The FCRA expressly
11 states that the *sole* additional element that may be included with the disclosure is an authorization,
12 “which authorization may be made on the document referred to in clause (i)....” 15 U.S.C. §
13 1681b(b)(2)(A)(ii).

14 The United States Court of Appeals for the Ninth Circuit has found that a background check
15 disclosure document that Plaintiff contends is similar to the one here did not comply with the FCRA
16 standalone document requirement and was not clear. *Gilberg v. California Check Cashing Stores,*
17 *LLC* (9th Cir. 2019) 913 F.3d 1169.2 The form in *Gilberg* included references “extraneous
18 information,” including rights under various states’ law and to a separate document containing a
19 summary of rights, as Plaintiff alleges regarding the forms here. *Id.*, at 1175-1176.

20 2. ICRAA

21 The ICRAA is the California state iteration of the federal FCRA however the ICRAA
22 imposes stricter clauses than the FCRA. The ICRAA defines “investigative consumer report” as a
23 “consumer report in which information on a consumer's character, general reputation, personal
24 characteristics, or mode of living is obtained through any means. The term does not include a
25 consumer report or other compilation of information that is limited to specific factual information
26 relating to a consumer's credit record or manner of obtaining credit obtained directly from a creditor
27 of the consumer or from a consumer reporting agency when that information was obtained directly
28 from a potential or existing creditor of the consumer or from the consumer. Cal Civ. Code

1 §1786.2(c). In order for an employer to seek an investigative consumer report for employment
2 purposes, the employer or person procuring or causing the report to be made must provide a “clear
3 and conspicuous disclosure in writing to the consumer at any time before the report is procured or
4 caused to be made in a document that consists solely of the disclosure, that:

5 (i) An investigative consumer report may be obtained.

6 (ii) The permissible purpose of the report is identified.

7 (iii) The disclosure may include information on the consumer's character, general
8 reputation, personal characteristics, and mode of living.

9 (iv) Identifies the name, address, and telephone number of the investigative
10 consumer reporting agency conducting the investigation.

11 (v) Notifies the consumer in writing of the nature and scope of the investigation
12 requested, including a summary of the provisions of Section 1786.22 .

13 (vi) Notifies the consumer of the Internet Web site address of the investigative
14 consumer reporting agency identified in clause (iv), or, if the agency has no
15 Internet Web site address, the telephone number of the agency, where the
16 consumer may find information about the investigative reporting agency's privacy
17 practices, including whether the consumer's personal information will be sent
18 outside the United States or its territories and information that complies
19 with subdivision (d) of Section 1786.20 . This clause shall become operative on
20 January 1, 2012.”

21 Cal. Civ. Code §1786.16(a)(2)(B).

22 The procurer of the investigative consumer report must also “[p]rovide the consumer a means by
23 which the consumer may indicate on a written form, by means of a box to check, that the consumer
24 wishes to receive a copy of any report that is prepared.” Cal. Civ. Code §1786.16(b)(1).

25 3. CCRAA

26 The CCRAA provides that it is California’s intention to ensure that consumer credit
27 reporting agencies “exercise their grave responsibilities with fairness, impartiality, and a respect for
28 the consumer’s right to privacy.” Cal. Civ. Code §1785.1(b). Section 1785.20.5(a) of the CCRAA

1 requires that prior to requesting a consumer credit report for employment purposes, the user of the
2 report shall provide written notice that: (a) identifies the specific basis under Section 1024.5(a) of
3 the Labor Code for use of the report; (b) informs the person of the source of the report; and (c)
4 contains a box that the person may check off to receive a copy of the credit report. The employer
5 must provide the report to the applicant or employee contemporaneously and at no charge.

6 **E. The Disclosure Forms At Issue**

7 The FCRA and ICRAA both require a disclosure form to be “clear and conspicuous.” 15
8 U.S.C. § 1681b(b)(2)(A)(i); Civil Code § 1786.16(a)(2)(B).

9 In the present Action, Plaintiff alleges that Defendant did not provide any disclosure
10 whatsoever prior to conducting a background check on Plaintiff and the other FCRA Class
11 Members. (Huether Decl., ¶ 33.)

12 As there was purportedly no disclosure made to Plaintiff and the other FCRA Class
13 Members, it would follow that the disclosure was not conspicuous, it was not clear, and it was not a
14 standalone documents. Conspicuous means “readily noticeable to the consumer.” *Rubio v. Capital*
15 *One Bank* (9th Cir. 2010) 613 F.3d 1195, 1200. Further, the disclosure could not have been neither
16 standalone nor clear.

17 Defendant asserted several viable defenses to this matter. First, Defendant contends that
18 Plaintiff’s claims were not timely, in that Plaintiff had notice that a background check was
19 conducted at the time he was hired, and failed to bring his action in a timely manner. Defendant
20 further could contend that it was unaware it needed to provide such a disclosure. Plaintiff, therefore,
21 could not recover statutory or restitutionary damages under ICRAA. Defendant’s position is that,
22 even if there was any technical violation of the law, that any such violation was not “willful,” which
23 is required under the FCRA for class certification and a potential award of statutory and punitive
24 damages. Defendant further disagreed that Plaintiff’s purported class would have been certified in
25 whole or in part. At all times, Defendant has denied all liability. (Huether Decl., ¶ 34.)

26 ///

27 ///

III. THE SETTLEMENT

The settlement contemplates (i) entry of an Order preliminarily approving the settlement and approving certification of a provisional settlement class, contingent upon final approval of the settlement; and (ii) entry of an Order granting final approval of the settlement and judgment.

Subject to Court approval pursuant to Section 382 of the California Code of Civil Procedure and Rule 3.769 et seq. of the California Rules of Court, the Parties have agreed to settle the Lawsuit by agreement upon the terms and conditions and for the consideration set forth in the Stipulation, a copy of which is attached to the Declaration of Melissa A. Huether as **Exhibit “1.”** A summary of the key terms of the Settlement is as follows:

1. “California Class” means all individuals who are or previously were employed by Defendant in California who were classified as hourly, non-exempt employees during the California Class Period. (Settlement, § 1.5.)
2. “California Class Period” means the period from May 5, 2017 to July 12, 2022. (Settlement, § 1.7.)
3. “FCRA Class” means all individuals in California that had their background checked by Defendant during the FCRA Class Period, as alleged in Case No. 21STCV18204. (Settlement, § 1.20.)
4. “FCRA Class Period” means the period from May 5, 2016 to July 12, 2022. (Settlement, § 1.22.)
5. “Gross Settlement Amount” means \$850,000.00 which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 8 below. The Gross Settlement Amount will be used to pay the Individual FCRA Payments, Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, the Class Representative Service Payment, and the Administration Expenses Payment, and any other amount provided for under this agreement, except as provided in Paragraph 8 below. (Settlement, § 1.25.)
6. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual FCRA Payments, Individual PAGA Payments, the LWDA PAGA Payment, the Class Representative Service Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The Net Settlement Amount is to be paid to Participating California Class Members as Individual Class Payments. (Settlement, § 1.32.)

- 1 7. An Individual Class Payment calculated by (a) dividing the Net Settlement Amount
2 by the total number of Workweeks worked by all Participating California Class
3 Members during the California Class Period and (b) multiplying the result by each
4 Participating California Class Member's Workweeks. (Settlement, §§ 3.2.4.)
- 5 8. Each Participating FCRA Class Member will receive payment in the amount of
6 \$500.00 from the Gross Settlement Amount. Those FCRA Class Members who
7 exclude themselves from the FCRA Settlement will not receive payment and will not
8 release the Released FCRA Claims. (Settlement, §§ 3.2.6.)
- 9 9. 20% of each Participating California Class Member's Individual Class Payment will
10 be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portion is
11 subject to tax withholding and will be reported on an IRS W-2 Form. The remaining
12 80% of each Participating California Class Member's Individual Class Payment
13 will be allocated to settlement of claims for interest and penalties (the "Non-Wage
14 Portion"). The Non-Wage Portion is not subject to tax withholding and will be
15 reported on IRS 1099 Forms. Participating California Class Members assume full
16 responsibility and liability for any employee taxes owed on their Individual Class
17 Payment. If the Court approves a PAGA Settlement Amount in less than the amount
18 requested, the Administrator will allocate the remainder to the Net Settlement
19 Amount. The Administrator will report the Individual PAGA Payments on IRS 1099
20 Forms. Each Participating FCRA Class Member's Individual FCRA Payment will be
21 allocated to settlement of Released FCRA Claims which are penalties, will not
22 include tax withholdings, and will be reported on IRS 1099 Forms. Participating
23 FCRA Class Members assume full responsibility and liability for any employee taxes
24 owed on their Individual FCRA Payment. (Settlement, § 3.2.4.1, 3.2.5.2., 3.2.6.1.)
- 25 10. The Administrator will issue checks for the Individual Class Payments and/or
26 Individual PAGA Payments and send them to the Class Members via First Class U.S.
27 Mail, postage prepaid. The face of each check shall prominently state the date (not
28 less than 180 days after the date of mailing) when the check will be voided. For any
Class Member whose Individual FCRA Payment check, Individual Class Payment
check or Individual PAGA Payment check is uncashed and cancelled after the void
date, the Administrator shall transmit the funds represented by such checks to the
California Controller's Unclaimed Property Fund in the name of the Class Member
thereby leaving no "unpaid residue" subject to the requirements of California Code of
Civil Procedure Section 384, subd. (b). (Settlement, § 4.4.1-4.4.3.)
11. The Release by Participating California Class Members is as follows: All
Participating California Class Members, on behalf of themselves and their respective
former and present spouses, representatives, agents, attorneys, heirs, administrators,
successors, and assigns, release Released Parties from (i) all claims that were alleged,
or reasonably could have been alleged, based on the California Class Period facts
stated in the Action including (a) any and all claims involving any alleged (1) failure
to pay wages for all hours worked at minimum wage; (2) failure to pay overtime
wages for daily overtime worked; (3) failure to authorize or permit meal periods and

1 pay meal period premiums; (4) failure to authorize or permit rest periods and pay rest
2 period premiums; (5) failure to timely pay earned wages during employment; (6)
3 failure to provide complete and accurate wage statements; (7) failure to timely pay
4 all earned wages and final paychecks due at time of separation of employment; and
5 (8) unfair business practices. Participating California Class Members do not release
6 any other claims, including claims for vested benefits, wrongful termination,
7 violation of the Fair Employment and Housing Act, unemployment insurance,
8 disability, social security, workers' compensation, or claims based on facts occurring
9 outside the California Class Period. (Settlement, § 5.2)

10 12. The Release by Participating FCRA Class Members is as follows: all Participating
11 FCRA Class Members, on behalf of themselves and their respective former and
12 present spouses, representatives, agents, attorneys, heirs, administrators, successors,
13 and assigns, release Released Parties from (i) all claims that were alleged, or
14 reasonably could have been alleged, based on the FCRA Class Period facts stated in
15 the Operative Complaint including violations of the following: (1) Fair Credit
16 Reporting Act; (2) Investigative Consumer Reporting Agencies Act; (3) Consumer
17 Credit Reporting Agencies Act; and (4) unfair business practices. (Settlement, § 5.4.)

18 13. The Release by PAGA Participants is as follows: all PAGA Participants are deemed
19 to release, on behalf of themselves and their respective former and present spouses,
20 representatives, agents, attorneys, heirs, administrators, successors, and assigns, the
21 Released Parties from all claims for PAGA penalties that were alleged, or reasonably
22 could have been alleged, based on the PAGA Period facts stated in the Action.
23 (Settlement, § 5.3.)

24 14. The Parties have agreed to retain Phoenix Class Action Administration Solutions to
25 perform the customary duties of Administrator (the "Administrator"). (Settlement, §
26 1.2.)

27 15. A Class Counsel Fees Payment of not more than 1/3, which is currently estimated to
28 be \$283,333.00, and Class Litigation Expenses Payment of not more than
\$25,000.00. Defendant will not oppose requests for these payments provided that do
not exceed these amounts. (Settlement, §3.2.2.)

16. Class Representative Service Payment to the Class Representative of not more than
\$10,000.00 (in addition to any Individual Class Payment and any Individual PAGA
Payment the Class Representative is entitled to receive as a Participating Class
Member). (Settlement, § 3.2.1.)

17. "Response Deadline" means 60 calendar days after the Administrator mails Notice to
Class Members and Aggrieved Employees, and shall be the last date on which Class
Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or
(b) fax, email, or mail his or her Objection to the Settlement. Class Members to
whom Notice Packets are resent after having been returned undeliverable to the
Administrator shall have an additional 14 calendar days beyond the Response

Deadline has expired. (Settlement, § 1.50.)

18. Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline. Class Members may elect to request exclusion from the either or both the FCRA Class and the California Class. (Settlement, 7.5.1.)

19. Participating California Class Members and/or Participating FCRA Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating California Class Members and Participating FCRA Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating California Class Member or Participating FCRA Class Member who elects to send a written objection to the Administrator must do so not later than 60 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed). (Settlement, § 7.7.2.)

IV. ANALYSIS

A. Class Action Settlements Are Subject To Review And Approval Under The California Rules of Court

Rule 3.769 of the California Rules of Court requires court approval for class action settlements. "Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement." (Cal. Rules of Court, rule 3.769(g).) Courts act within their discretion in approving settlements which are fair, not collusive, and take into account "all the normal perils of litigation as well as the additional uncertainties inherent in complex class actions." (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167, 179, cert. den. sub nom. *Iowa Beef Processors, Inc. v. Meat Price Investigators Ass'n* (1981) 452 U.S. 905.)

B. This settlement Is Fair, Reasonable, And Adequate

The purpose of the preliminary evaluation of class action settlements is to determine only whether the proposed settlement is within the *range of reasonableness* and, therefore, whether

1 notice to the class and the scheduling of a formal fairness hearing are warranted. (*Wershba v. Apple*
2 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35; Newberg on Class Actions (4th Ed.) §11:25.)
3 Courts have broad powers to determine whether a proposed settlement is fair under the
4 circumstances of the case. (*Wershba, supra*, 91 Cal.App.4th at 234-35; *Mallick v. Superior Court*
5 (1979) 89 Cal.App.3d 434, 438.) In evaluating preliminary approval, courts must consider several
6 relevant factors, including “the strength of the Plaintiffs’ case, the risk, expense, complexity and
7 likely duration of further litigation, the risk of maintaining class action status through trial, the
8 amount offered in settlement, the extent of discovery completed and the stage of the proceedings,
9 [and] the experience and views of counsel....” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th
10 1794, 1801.) “The list of factors is not exclusive and the court is free to engage in a balancing and
11 weighing of the factors depending on the circumstances of each case.” (*Wershba, supra*, 91
12 Cal.App.4th at 245.) Furthermore, courts must give “proper deference to the private consensual
13 decision of the parties” because “the court’s intrusion upon what is otherwise a private consensual
14 agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to
15 reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or
16 collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair,
17 reasonable and adequate to all concerned.” (*Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d
18 1011, 1027.)

19 A proposed class action settlement is presumed fair under the following circumstances: (1)
20 the parties reached settlement after arms-length negotiations; (2) investigation and discovery were
21 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
22 litigation, and (4) the percentage of objections is small. (*Dunk v. Ford Motor Co., supra*, 48
23 Cal.App.4th at 1802.) The Declaration of Class Counsel Melissa A. Huether demonstrates that the
24 proposed settlement was the product of serious, informed, and non-collusive negotiations and
25 demonstrates counsel’s extensive experience in both employment law as well as class action
26 litigation.

27 ///

28 ///

1 **1. The Settlement is the result of serious, informed, and non-collusive**
2 **negotiations.**

3 The Settlement was reached as a result of arm's-length negotiations facilitated by a highly
4 regarded and experienced wage and hour mediator, Lynn Frank, Esq. and analysis by Plaintiff's
5 counsel. (Huether Dec. ¶¶8-36.) While Plaintiff believes in the merits of his case, he also recognize
6 the inherent risks of litigation and understands the benefit of the Class receiving settlement funds
7 immediately as opposed to risking an unfavorable decision on class certification, summary
8 judgment, at trial and/or the damages awarded, and/or on an appeal that can take several more years
9 to litigate. (*Id.*)

10 **2. The extent of the information provided through formal and informal**
11 **discovery and the stage of the proceedings support the Settlement.**

12 As described herein, the Parties investigated and evaluated the factual strengths and
13 weaknesses of this case before reaching the proposed Settlement and engaged in sufficient
14 investigation and discovery, as referenced above, to support the Settlement. (*Id.*) Accordingly, the
15 proposed Settlement was reached following probative factual evaluation of Defendant's relevant
16 policies and procedures and review, compilation, and analysis by Plaintiff's counsel and Plaintiff's
17 counsel's expert of the following: (1) the total number of current and former putative class members
18 and aggrieved employees who worked during the relevant time periods; (2) the total number of
19 workweeks at issue during the relevant time periods; (3) the total number of pay periods at issue during
20 the relevant time periods; (4) the average hourly rate for the putative class members; (5) relevant policy
21 documents and correspondence (including but not limited to meal and rest break policies and
22 correspondence); (6) number of individuals who had their had their background checked by Defendant;
23 and (7) other relevant information, including Plaintiff's personnel file, wage statements, and time
24 records. Further, the Plaintiff's counsel had multiple discussions, calls, and emails with the
25 Defendant's counsel about the disputed factual and legal issues involved in this case, the risks
26 attending further prosecution, including risks related to a contested motion for class certification, and
27 the substantial benefits to be received pursuant to a compromise and settlement of the case as set forth
28 in the Agreement. As such, settlement on the terms agreed to are in the best interest of Plaintiff and the

1 settlement class. (*Id.*)

2 Thus, the Settlement came only after the case was fully investigated by counsel, as set forth
3 above. This litigation, therefore, has reached the stage where “the Parties certainly have a clear view
4 of the strengths and weaknesses of their cases” sufficient to support the Settlement. (*Boyd v. Bechtel*
5 *Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.)

6 **3. Plaintiff’s counsel are experienced in similar litigation.**

7 Experienced counsel, operating at arms-length, have weighed the strengths of the case and
8 examined all of the issues and risks of litigation and endorse the proposed settlement. The view of
9 the attorneys actively conducting the litigation “is entitled to significant weight” in deciding
10 whether to approve the settlement. (*Fisher Bros. v. Cambridge Lee Industries, Inc.* (E.D. Pa. 1985)
11 630 F.Supp. 482, 488; *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, *affd.*
12 661 F.2d 939 (9th Cir. 1981); *Boyd v. Bechtel Corp.*, *supra*, 485 F.Supp. at 617.)

13 Both Plaintiff’s and Defendant’s counsel are experienced in employment, wage and hour
14 and class action matters. Lavi & Ebrahimian LLP is a well-regarded firm that handles almost
15 exclusively employment matters. (Huether Dec. ¶37.) Joseph Lavi, of Lavi & Ebrahimian, LLP, has
16 been approved in class counsel in numerous actions and has been named a Southern California
17 Super Lawyer the area of Plaintiff’s employment litigation - class action from 2011-2022. (*Id.*)
18 Defendant’s counsel, of Callahan, Thompson, Sherman & Caudill, LLP are also extremely well-
19 regarded and respected as employment defense counsel. Counsel on both sides share the view –
20 endorsed by an experienced wage and hour class action mediator – that this is a fair and reasonable
21 settlement in light of the complexities of the case, the state of the law and uncertainties of class
22 certification and litigation, and the benefit the settlement confers on the class. (Huether Dec. ¶¶8-
23 36.) Given the risks inherent in litigation, in class certification proceedings, and in the defenses
24 asserted, this settlement is fair, adequate, and reasonable and in the best interests of the class. (*Id.*)

25 ///

26 ///

27 ///

1 **4. The Settlement is fair and reasonable based on the strengths of Plaintiff's**
2 **case and the risks and costs of further litigation**

3 Plaintiff and his counsel have concluded it was reasonable to enter into the proposed
4 Settlement. Defendant has vigorously contested and continue to contest liability for the claims
5 asserted in the action. Although Defendant believes that class certification would be unlikely on
6 such claims, it nevertheless agreed to attempt resolution of the case through extensive informal
7 discovery and mediation to avoid the expense, distraction and uncertainty of protracted litigation.

8 There are significant legal uncertainties associated with cases such as this as they can be
9 factually complex and require protracted litigation to resolve. A settlement is not judged solely
10 against what might have been recovered had plaintiff prevailed at trial, nor does the settlement have
11 to provide 100% of the damages sought to be fair and reasonable. (*Linney v. Cellular Alaska*
12 *Partnership* (9th Cir. 1998) 151 F. 3d 1234, 1242; *Wershba*, 91 Cal.App.4th at 246 & 250; *Rebney*
13 *v. Wells Fargo Bank* (1990) 220 Cal.App. 3d 1117, 1139.) Instead, “[c]ompromise is inherent and
14 necessary in the settlement process...even if the relief afforded by the proposed settlement is
15 substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to
16 a class settlement because the public interest may indeed be served by a voluntary settlement in
17 which each side gives ground in the interest of avoiding litigation” (*Wershba*, 91 Cal.App.4th at
18 250.)

19 **5. The Proposed Settlement is a Reasonable Compromise of the California**
20 **Class’ Claims**

21 To evaluate a settlement, the trial court must receive “basic information about the nature
22 and magnitude of the claims in question and the basis for concluding that the consideration being
23 paid for the release of those claims represents a reasonable compromise.” (*Kullar v. Foot Locker*
24 *Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) However, the record need not contain an explicit
25 statement of the maximum theoretical recovery:

26 “Greenwell misunderstands *Kullar*, apparently interpreting it to require the record
27 in all cases to contain evidence in the form of an explicit statement of the
28 maximum amount the plaintiff class could recover if it prevailed on all its
 claims—a number which appears nowhere in the record of this case. But *Kullar*
 does not, as Greenwell claims, require any such explicit statement of value; it

requires a record which allows “an understanding of the amount that is in controversy and the realistic ranges of outcomes of the litigation.”

(*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409.)

Based on the information informally produced by Defendant, from May 5, 2017 through the time of mediation in May 2022, Defendant employed approximately 132 (including 35 current and 97 former) current and former non-exempt employees who worked as service technicians over the course of approximately 5,867 workweeks who received an average rate of pay for \$16.32/hour. (Huether Dec. ¶14.) Based on Class Counsel’s and Plaintiff’s expert witness’s analysis of the data, the maximum exposure for Plaintiff’s claims were as follows:

With regard to Plaintiff’s Unpaid Wages, Plaintiff alleged that Defendant required Plaintiff and other California Class Members to work off the clock beyond their scheduled shift times by requiring them to make phone calls to clients as well as answer phone calls from clients. Plaintiff estimates he spent approximately 15 minutes a day working off the clock to answer phone calls. Therefore, Plaintiff estimated there were approximately \$119,686.80 in damages for unpaid minimum wages [Calculated as follows: 5,867 workweeks x 5 days a week x .25 hours off the clock work x \$16.32 avg. hourly rate = \$119,686.80.] (Huether Dec. ¶15.)

With respect to Plaintiff’s claim for unpaid overtime wages, Plaintiff alleged that Defendant failed to properly calculate the regular rate of pay when paying overtime wages. Plaintiff and other Class Members received commissions and those were not factored into the calculation of the regular rate when overtime was paid. Plaintiff’s expert’s review determined that Plaintiff was shorted an average of \$12 a pay period due to Defendant’s failure to pay overtime at the regular rate of pay. As a result, there are approximately \$35,202.00 in damages for unpaid overtime wages. [Calculated as follows: 2,933 pay periods x \$12 unpaid overtime wages per pay period= \$35,202.00.] (Huether Dec. ¶16.)

With regard to Plaintiff’s Meal Break Claim, Plaintiff alleged that Defendant automatically deducted an hour meal periods regardless of whether one was actually taken or whether it was actually an hour in length. Plaintiff alleged that he and other class members were required to continue working during their shifts without taking a meal break despite being entitled

1 to one because they worked more than 6 hours. Plaintiff also alleged he often worked over 10
2 hours in a shift and did not receive a second meal period. Based on information from Plaintiff, he
3 estimates he took a compliant, uninterrupted meal period during approximately half of his shifts.
4 Therefore, Plaintiff estimated there was a maximum of approximately \$239,373.60 in damages for
5 meal break violations. [Calculated as follows: 5,867 workweeks x 5 shifts per week x \$16.32 avg.
6 hourly rate x 50% violation rate = \$239,373.60]. (Huether Dec. ¶17.)

7 With regard to Plaintiff's Rest Break Claim, Plaintiff alleged that often did not receive rest
8 periods and when he did, they were interrupted with work inquiries. Given the foregoing, the
9 maximum that Plaintiff could recover amounted to approximately \$478,747.20. [Calculated as
10 follows: 5,867 workweeks x 5 rest period violations per week x \$16.32 avg. hourly rate =
11 \$478,747.20.] (Huether Dec. ¶18.)

12 With regard to Plaintiff's Timely Wages Claim, based on the underlying unpaid wages,
13 meal period, and rest period claims, Plaintiff alleges that Defendant failed to timely pay wages
14 during employment. The maximum that Plaintiff could recover amounted to approximately
15 \$26,400.00. [132 employees x \$200 penalty = \$26,400.00.] (Huether Dec. ¶19.)

16 With regard to Plaintiff's Wage Statement claim, the maximum that Plaintiff could recover
17 amounted to approximately \$528,000.00. [132 employees X \$4,000 maximum penalty =
18 \$528,000.00.] (Huether Dec. ¶20.)

19 With regard to Plaintiff's Waiting Time penalties claim, the maximum that Plaintiffs could
20 recover amounted to approximately \$379,929.60. [97 former employees X 8 hours per workday X
21 \$16.32/hour average rate of pay X 30 days = \$379,929.60.] (Huether Decl. ¶21.)

22 As such, Plaintiff's maximum potential recovery in this matter for the Class' wage and
23 hour claims, excluding PAGA penalties, would amount to approximately \$1,807,339.20.
24 (Huether Decl. ¶20.)

25 Regarding the PAGA penalty exposure analysis, according to the data informally produced
26 by Defendant in this case, during the relevant PAGA period (from May 5, 2020 to the May 2022
27 mediation) there are approximately 2,796 pay periods for approximately 84 aggrieved employees.
28 (Huether Decl. ¶23.)

1 Regarding the PAGA penalty exposure analysis, as an initial matter, in wage and hour
2 class action cases that settle, which are the overwhelming majority of such cases, very little of the
3 total settlement is paid to PAGA penalties in order to maximize payments to class members. *See,*
4 *e.g., Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 589 (2010) (no abuse of discretion to approve
5 class action settlement allocating \$0 to PAGA claims); *Ceja-Corona v. CVS Pharm., Inc.*, 2015 U.S.
6 Dist. LEXIS 5118, 2015 WL 222500, at *2-3 (E.D. Cal. Jan. 14, 2015) (preliminarily approving
7 \$10,000 in PAGA penalties out of a total settlement amount of \$900,000), report and
8 recommendation adopted, 2015 U.S. Dist. LEXIS 25730, 2015 WL 925598 (E.D. Cal. Mar. 3,
9 2015); *Nen Thio v. Genji, LLC*, 14 F. Supp. 3d 1324, 1330 (N.D. Cal. 2014) (preliminarily
10 approving \$10,000 in PAGA penalties out of a total settlement amount of \$1,250,000); *Franco v.*
11 *Ruiz Food Prods.*, 2012 U.S. Dist. LEXIS 169057, 2012 WL 5941801, at *14 (E.D. Cal. Nov. 27,
12 2012) (granting final approval of \$10,000 in PAGA penalties out of a total settlement amount of
13 \$2,500,000); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, 2012 WL 5364575,
14 at *3 (E.D. Cal. Oct. 31, 2012) (granting final approval of \$10,000 in PAGA penalties out of a total
15 settlement amount of \$3,700,000); *Chu v. Wells Fargo Invs., LLC*, 2011 U.S. Dist. LEXIS 15821,
16 2011 WL 672645, at *1 al. Feb. 16, 2011) (granting final approval of \$10,000 in PAGA penalties
17 out of a total settlement amount of \$6,900,000). In these settlements, the parties generally maximize
18 statutory penalties and minimize PAGA penalties. *See, e.g., Franco*, 2012 U.S. Dist. LEXIS
19 169057, 2012 WL 5941801, at *2, *14 (approving a \$10,000 PAGA award out of a total settlement
20 amount of \$2,500,000). (Huether Decl. ¶24.)

21 Plaintiff recognizes that PAGA claims generally settle for a mere fraction of multiple
22 “stacked” PAGA penalties as is described above, but more typically resolve for a reasonable
23 fraction of the unstacked PAGA exposure. Here, since the claims for minimum wages, overtime
24 wages, meal periods, rest periods, timely wages, wage statements, and waiting time penalties are all
25 premised at least partially on the same factual basis (i.e., that class members worked off the clock
26 and were generally unable to take off duty meal and rest periods) stacking these penalties could
27 arguably be overly punitive. Instead, seeking only penalties for minimum wages to account for the
28 off the clock work and overtime wages to account for the failure to properly calculate the regular

1 rate, with the meal and rest period violations, results in far more reasonable and less punitive
2 penalties that eliminate the “stacked” penalties for each Labor Code section violated as a result of
3 the same conduct. As a result, Defendant could argue Plaintiff and the aggrieved employees may
4 only be able to recover penalties under minimum wage claim, overtime wage, and meal and rest
5 period violations. Thus, if Defendant is correct on the “stacking” issue, the maximum theoretical
6 penalties would be substantially less under Defendant’s view of the law. And if the Court decided
7 that Defendant also is correct about the initial/subsequent violation rate issue, the maximum
8 theoretical exposure would be further reduced by about half. (Huether Decl. ¶25.)

9 Second, Plaintiff’s calculation also assumes that Plaintiff’s PAGA claims could be tried in a
10 manageable manner that comports with due process, which Defendant vigorously disputes.
11 (Huether Decl. ¶26.)

12 Third, the Court has discretion under PAGA to reduce the amount of any penalties awarded
13 for equitable reasons. (Huether Decl. ¶27.)

14 Fourth, Defendant would argue that PAGA penalties would be limited in any event. As
15 discussed in detail above, Defendant denies any liability. Moreover, Defendant would argue that
16 even if Plaintiff prevailed, the recoverable penalties under PAGA are minimal. Indeed, courts to
17 consider the issue have refused to “stack” PAGA penalties. *See Carrington v. Starbucks*
18 *Corporation* (Cal. Ct. App. Nov. 27, 2018) No. D072392 (published Dec. 19, 2018) (approving
19 PAGA penalty reduction to \$5 per pay period); *accord Atempa v. Pedrazzani* (2018) 27
20 Cal.App.5th 809. Moreover, Defendant would argue that Plaintiff is not entitled to recover PAGA
21 penalties at the subsequent violation rate of \$200 per pay period. California’s appellate courts
22 have held that “[u]ntil the employer has been notified that it is violating a Labor Code provision
23 (whether or not the commissioner or court chooses to impose penalties), the employer cannot be
24 presumed to be aware [of the violation]” and therefore, until a Court or the Commissioner issues a
25 finding of a violation, the initial \$100 violation rate applies for each pay period in which the
26 alleged violation occurred. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209;
27 *accord Amalgamated Transit Union Local 1309 v. Laidlaw Transit Service, Inc.* (S.D. Cal. Aug.
28 10, 2009) 2009 WL 2448430, at *9 (“[u]nder California law, courts have held that employers are

1 not subject to heightened penalties for subsequent violations unless and until a court or
2 commissioner notifies the employer that it is in violation of the Labor Code”). Thus, Defendant
3 would argue that even if the Plaintiff was able to establish any violation of the Labor Code, the
4 PAGA penalties assessed for these violations will be computed at the \$100 rate, as opposed to the
5 \$100 per pay period rate at maximum, and there is a likelihood that a further reduction of the
6 penalty to \$5 per pay period as approved in *Carrington* would apply given Defendant’s
7 compliance with the Labor Code as discussed above. (Huether Decl. ¶28.)

8 Finally, Plaintiff anticipates that Defendant would argue that, the Court might follow the
9 logic in *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209 and assess only the
10 initial \$100 violation rate for each pay period (i.e. at \$100 per pay period X 2,796 pay periods at
11 issue), therefore is likely Defendant’s maximum exposure is actually only \$279,600.00.
12 Defendant likely would have argued that this Court would use the *Carrington* valuation as a
13 ceiling for assessing PAGA penalties and that this amount (i.e., \$279,600 was its true “worst case
14 scenario” exposure). (Huether Decl. ¶29.)

15 In sum, the settlement in the instant case provides for a gross fund value of \$850,000 with a
16 PAGA allocation of \$30,000 with 75% (\$22,500) payable to the LWDA and 25% (\$7,500)
17 distributed the PAGA Participants and falls squarely within the range of reasonableness for PAGA
18 allocations outlined in the case law above. (Huether Decl. ¶28.)

19 Defendant however maintained significant defenses to the above claims as follows: With
20 respect to Plaintiff claims for unpaid minimum wages, Defendant argued that the time spent
21 answering phone calls was de minimis and did not need to be paid. Defendant would also likely
22 argue that it did not require Plaintiff and other employees to answer calls while off the clock and
23 to the extent that they did, it was at their own discretion. Finally, Defendant could argue that if a
24 class member worked off the clock they should have reported it so they could be paid for such
25 time. Regarding Plaintiff’s overtime claims for failure to calculate the regular rate of pay,
26 Defendant argued that properly paid all overtime wages owed at the proper rate. Regarding meal
27 periods, Defendant argued that it properly automatically deducted meal periods because all
28 employees should have been taking compliant meal periods. Defendant contended it had

1 compliant meal period policies and issued those to all Class Members. With respect to Plaintiff's
2 rest period claim, Defendant contended that it provided compliant written rest period policies and
3 therefore Plaintiff and the Class were on notice of what rest periods should have been taken.
4 Further, Defendant argued that since records of rest periods are not maintained or required to be
5 maintained, proving rest periods violations would be extremely difficult and rely on class member
6 testimony. Additionally, with Defendant could contend any alleged wage statement violations
7 could not be shown to be "knowing and intentional" given its good-faith defenses, and that
8 Plaintiff cannot show he or other employees "suffer[ed] injury," as required by Labor Code §
9 226(e). Defendant would likely argue that wage statements always accurately reflected hours
10 worked and amounts paid to employees. Defendant also could argue that wage statement penalties
11 are not recoverable at all for alleged meal and rest period violations. Given Defendant's
12 anticipated arguments that no violations occurred, that Class Members suffered no "injury," that
13 any alleged violations were not "knowing and intentional," and that meal and rest period claims
14 cannot support wage statement penalties. Based on the foregoing, Defendant concluded, Plaintiff
15 and Class Members were paid out upon separation of employment for all wages owed, and that
16 Defendant believed, in good faith, that it was properly paying all wages to separating employees. In
17 other words, Defendant concluded, Plaintiff would not be able to establish the willful elements of
18 their Labor Code sections 226 or 203 claims. For these reasons, Defendant concluded, Plaintiff
19 would not likely prevail on their claims. (Huether Dec. ¶31.)

20 If Plaintiff continued litigating this matter, the class members could potentially receive
21 **nothing** if the court agreed with Defendant's position or if Defendant was able to defeat
22 certification based on the individual inquiries that would be required regarding Plaintiff's off the
23 clock claims and meal and rest claims. Furthermore, even if the Court agreed with Plaintiff, Plaintiff
24 still had to prove Defendant faced exposure under Plaintiff's derivative claims and acted
25 intentionally and *willfully* in order to receive the additional penalties under Labor Code Sections
26 203, 204, and 226. As such, Plaintiff's decision to settle this matter was in the best interest of the
27 Class Members.

28 ///

1 **6. The Proposed Settlement is a Reasonable Compromise of the FCRA Class’**
2 **Claims**

3 The FCRA’s damages provision limits recovery when it is shown that a defendant’s
4 actions are willful to between \$100 and \$1,000 or actual damages, whichever is greater. With
5 approximately 143 class members, the FCRA statutory damages, if liability were proven, ranges
6 between \$14,300.00 to \$143,000.00. Given the nature of the claims at issue here, it is reasonable
7 to assume that, if Plaintiff prevailed at trial, a jury in this case would enter an award at the lower
8 end of the potential statutory damages range. (Huether Dec. ¶32.)

9 A recent jury verdict from the Northern District of California in an FCRA case illustrates the
10 type of case where a jury would be more likely to award closer to the \$1,000 per violation penalty.
11 *Ramirez v. Trans Union LLC* (N.D. Cal. 2017) 2017 WL 5153280 (Order denying Motion for New
12 Trial). *Ramirez, supra*, at *1, involved an award of over \$60 million in punitive and statutory
13 damages in a case alleging violation of 15 U.S.C. § 1681e(b), which requires consumer reporting
14 agencies to use “reasonable procedures to assure maximum possible accuracy” of the information
15 they report. The defendant mistakenly identified the class members as being Specially Designated
16 Nationals on the federal government’s list of “terrorists, drug traffickers and others with whom
17 Americans are prohibited from doing business.” *Id.* In addition to punitive damages, the jury
18 awarded statutory damages of \$984.22 per class member. *Id.* at *5.

19 Here, Plaintiff alleges that Defendants violated Section 1681b(b)(2) of the FCRA by failing
20 to provide any disclosure documents whatsoever. Plaintiff does not contend that this alleged
21 violation resulted in monetary damages, job loss, emotional distress, or reputational harm. Thus,
22 while Plaintiff strongly believes that Defendants did not comply with the law, and that it was willful
23 under *Syed*, the alleged conduct at issue here is not comparable to the egregious conduct at issue in
24 *Ramirez*. (Huether Dec. ¶33.)

25 In determining the amount of statutory damages to award under the FCRA, courts have
26 looked at “the importance, and hence the value of the rights and protections” involved in the case.
27 *Ashby v. Farmers Ins. Co. of Or.* (D. Or. 2008) 592 F.Supp.2d 1307, 1308. For example, among the
28 conduct prohibited by the FCRA is the inclusion of inaccurate information in consumer reports after

1 the consumer has disputed the information. 15 U.S.C. § 1681i. It is reasonable to assume that a
2 statutory damages award would be significantly higher where the underlying grievance was that
3 inaccurate, seriously derogatory information is included in a consumer report, even though the
4 consumer demonstrated that it was inaccurate. Another prohibited act is including arrest records that
5 are more than seven years old in a consumer report. 15 U.S.C. § 1681c(a)(2). It would be reasonable
6 to assume that a violation of this section would result in a higher statutory damages award than the
7 conduct at issue here.

8 An estimate of the likely award is admittedly somewhat speculative. However, recent
9 district court decisions have indicated that the minimum of \$100 is the proper comparator in
10 standalone disclosure cases. *See, e.g., Lagos v. Leland Stanford Junior University* (N.D. Cal. 2017)
11 2017 WL 1113302 *4. As a district court explained:

12 A review of Plaintiffs' claim indicates that, assuming success, the award at
13 trial would be around \$100. While the inclusion of the waiver and
14 disclaimer might have been inconsistent with the language of the stand-
alone disclosure requirement, it was arguably consistent with the purpose
of that provision. *See* Letter from Cynthia Lamb, Investigator, Div. of Credit

15 Practices, Fed. Trade Comm'n, to Richard Steer, Jones Hirsch Connors &
16 Bull, P.C. (Oct. 21, 1997), 1997 WL 33791227 (F.T.C.), 1 (“The reason
17 for specifying a stand-alone disclosure was so that consumers will not be
distracted by additional information at the time the disclosure is given.”).
18 As for the possibility that applicants did not understand the waiver
(because it was included on the disclosure form), there is no indication
19 that Kelly has ever attempted to enforce that waiver. As such, the violation
of the FCRA asserted in this case is only technical in nature, and so the
20 Court would expect class members to receive around \$100—or less—
should they prevail at trial. *See Singleton v. Domino’s Pizza, LLC*, 976 F.
21 Supp. 2d 665, 680 (D. Md. 2013) (“[T]his case involves allegations of
22 technical FCRA violations, which creates the risk that even if a jury
awarded the minimum requisite statutory damages, i.e., \$100 to each of
23 the individual class members, the court may find remitter/reduction
appropriate.”). *Hillson v. Kelly Servs.*, 2017 WL 279814 (E.D. Mich.
24 2017) (approving settlement where statutory damages award ranged from
\$14 to \$41 per class member).

25
26 In this case, Plaintiffs sought statutory damages under the FCRA, which
27 provides for damages between \$100 and \$1,000 if the Plaintiffs can prove
that violation of the statute was willful. 15 U.S.C. § 1681n(a)(1). To
28 obtain statutory damages for an FCRA violation, plaintiffs must meet a

1 very high standard or proof, and may even lose after a successful trial
2 verdict. *See Smith v. LexisNexis Screening Solutions, Inc.*, 837 F.3d 604,
3 611 (6th Cir. 2016) (reversing jury verdict, finding that the consumer
4 reporting agency’s conduct did not constitute a willful violation of the
5 FCRA); *Domonoske v. Bank of America, N.A.*, 790 F.Supp.2d 466, 476
6 W.D. Va. 2011) (“given the difficulties of proving willfulness or even
7 negligence with actual damages, there was a substantial risk of on
8 payment [for FCRA violations]”). The FCRA does not provide specific
9 guidance to courts as to the appropriate relief for a statutory violation.
10 However, to recover actual damages Plaintiffs would need to prove that
11 they suffered an actual injury; for example, that they lost job opportunities
12 or their employment was terminated as a result of Aerotek’s actions. The
13 settlement at issue provides for a common fund of \$15,000,000, and per
14 class member payments of between \$13-\$80. (Doc. 33, p. 12). In the
15 unopposed brief, Plaintiffs assert that given the breadth of violations, as
16 well as the size of the Class, it is “unlikely that Plaintiffs would achieve an
17 award of statutory damages which, on a per person basis, would
18 substantially exceed \$100.” *Moore v. Aerotek, Inc.* (S.D. Ohio 2017) 2017
19 WL 2838148.

20 Multiple district courts have approved FCRA standalone disclosure settlements where the gross and
21 net settlement amounts were comparable and even lower than here. *See, e.g., Rhom v. Thumbtack,*
22 *nc.* (N.D. Cal. 2017) 2017 WL 4642409 (granting final approval in a case involving a claims-made,
23 albeit non-reversionary, settlement where 66,676 class members shared in a \$225,000 settlement or
24 a gross recovery of \$3.30 per class member); *Aceves v. Autozone Inc.* (C.D. Cal. Mar. 25, 2016) No.
25 5:14-cv-2032, ECF No. 41 (preliminary approval motion pending in settlement with gross recovery
26 of \$20 per class member in the disclosure class); *In re Uber FCRA Litigation* (N.D. Cal. 2017) 2017
27 WL 2806698 (approved a settlement of \$7.5 million with 1,025,954 class members, or \$7.31 per
28 class member); *Landrum v. Acadian Ambulance Serv., Inc.* (S.D. Tex. Nov. 5, 2015) No. 14-cv-
1467, ECF No. 37 (approving disclosure settlement of \$10 per person); *Walker v.*
McClane/Midwest, Inc., No. 2:14-CV- 04315, ECF No. 26 (W.D. Mo. July 20, 2015) (granting
preliminary approval of settlement in which disclosure class members will recover \$24); *Hillson v.*
Kelly Servs. Inc., No. 2:15-cv-10803, 2017 WL 3446596, at *3 (E.D. Mich. Aug. 11, 2017) (noting
that gross recovery in other FCRA 1681b(b)(2) cases average about \$30 per class member). *Grice v.*
Pepsi Bevs., Co., No. 17-cv-08853-JPO (S.D.N.Y. Jan. 28, 2019) (final approval of settlement
providing for a gross recovery of \$51.54 per class member); *Perez v. Performance Food Grp., Inc.*,

1 No. 2:17-cv-07128-MWF-JPR (C.D. Cal. June 7, 2019) (final approval of settlement that paid each
2 class member \$47); *Syed v. M-1, LLC*, No. 1:14-cv-00742 (E.D. Cal. Aug. 6, 2019) (final approval
3 of class settlement that paid each class member \$46.84); *Ortiz v. Genco, Inc.*, No. 4:16-cv-04601-
4 YGR (N.D. Cal. April 23, 2019) (final approval of class settlement where the FCRA portion paid
5 each class member the net amount of \$39.70); *Dukes v. Air Canada*, No. 8:18-cv-2176-T-17JSS
6 (M.D. Fla. Jan. 30, 2020) (final approval of settlement that paid each class member \$41.61); *Felix v.*
7 *WM. Bolthouse Farms, Inc.*, No. 1:19-cv-00312-AWI-HLT (E.D. Cal. May 4, 2020) (final approval
8 of settlement that estimated that each class member would receive \$37.38 per consumer report that
9 was obtained); *Harake v. Trace Staffing Solutions, LLC*, No. 8:19-cv-00243-CEH-CPT (M.D. Fla.
10 August 10, 2020) (final approval of settlement providing a net amount of \$33 to each class
11 member); *Rossini v. PNC Fin. Servs. Grp., Inc.*, No. 18-cv-1370, 2020 U.S. Dist. LEXIS 113242
12 (W.D. Pa. June 26, 2020) (final approval of settlement that included a class of individuals that
13 claimed a violation of § 1681b(b)(2) and that provided for a net payment of \$7.25 to each class
14 member if all class members submitted claim forms, and \$72.49 assuming that around 10% of the
15 class made claims). As noted above, if Plaintiff prevailed at trial, what a jury would award is
16 speculative, particularly given that there is no history of jury verdicts in standalone disclosure cases
17 to provide an empirical comparison. However, it would not be at all surprising if a jury decided to
18 award closer to the \$100 minimum than the maximum. In summary, Plaintiff believe that using
19 \$100 as the comparator is appropriate but, in any event, as shown above, this case is well within the
20 range of FCRA standalone disclosure claims approved by courts.

21 With regards to damages for the ICRAA, the plain language of the ICRAA makes clear that
22 statutory damages are not available in a class action. Cal. Civ. Code § 1786.50(a).

23 Finally, based on the text of the ICRAA statute, Defendants would assert that class members
24 can elect to recover under the FCRA or ICRAA, but not under both. Cal. Civ. Code §1786.52(b).
25 For all these reasons, courts have noted in the context of reviewing proposed class action
26 settlements in similar cases that the potential recovery on state law background check claims is
27 “quite limited” action cases. *See, e.g., In re Uber FCRA Litigation* (N.D. Cal. June 29, 2017) 2017
28 WL 2806698, at *5 (granting preliminary approval). It should be noted that FCRA Class Members

1 who would prefer to seek individual statutory or actual damages on these claims rather than the
2 payout in the class settlement have the opportunity to opt out of the Settlement.

3 Courts regularly approve settlements where the recovery is less than one quarter of the
4 maximum potential realistic recovery. *E.g., Bravo v. Gale Triangle* (C.D. Cal. 2017) 2017 WL
5 708766 *9 (approving settlement where recovery was 7.5% of projected maximum recovery
6 amount); *Officers for Justice v. Civil Service Com'n of City & County of S.F.* (9th Cir. 1982) 688
7 F.2d 615, 628. Here, the FCRA settlement as Individual FCRA Payments to the FCRA Class
8 Members is reasonable in comparison to the likely potential award at trial, which meets or exceeds
9 percentages routinely approved by courts.

10 Here, the Settlement provides that each FCRA Class Member who does not opt out of the
11 FCRA Settlement will receive \$500.00 as an Individual FCRA Payment. In light of the above,
12 \$500.00 to each FCRA Class Member is a reasonable penalty for Defendant's violations and it well
13 within the range of reasonableness for the resolution of the FCRA and related claims. Assuming
14 that none of the FCRA Class Member's request exclusion, the FCRA Class will be paid a total of
15 \$71,500.00 from the Gross Settlement Amount. (Huether Dec. ¶34.)

16 As a whole, this is a fair and reasonable result for all Class Members. Other substantial
17 benefits also include that it is a non-reversionary, non-claims made settlement, which distributes the
18 Net Settlement Amount on a pro rata basis based on the number of Workweeks each Participating
19 California Class Member worked for Defendant during the California Class Period. (Settlement,
20 §3.2.4.). The 25% portion of the PAGA Settlement Amount allocated to Aggrieved Employees will
21 be distributed to each Aggrieved Employee who worked during the PAGA Period based on their
22 individual number of PAGA Pay Periods during the PAGA Period. (Settlement, §3.2.5.1).
23 Settlement Class Members will have one hundred eighty (180) to cash their checks. Any funds not
24 distributed after the expiration of the Individual Class Payment checks shall escheat to the
25 California Controller's Unclaimed Property Fund to in the name of the Class Member. (Settlement,
26 § 4.4.3.). (Huether Dec. ¶35.)

27 The Gross Settlement Amount is reasonable in light of the risks involved in this case—
28 including the prospect of a potential adverse summary judgment ruling, class certification issues as

well as the uncertainty of class certification, defenses to the case, potential appeal, the elements of willfulness and/or injury required for certain penalties.

Plaintiff's Counsel is convinced that the proposed Settlement is in the best interest of the class based on the negotiations and a detailed knowledge of the issues present in this action. The affirmative defenses asserted by Defendant, the prospect of a potential adverse summary judgment ruling, preemption issues, class certification issues as well as the uncertainty of class certification, the difficulties of complex litigation, the lengthy process of establishing specific damages and various possible delays and appeals were also carefully considered by Class Counsel in agreeing to the proposed Settlement. In light of the above, the proposed Settlement is well within the "ballpark" of reasonableness and should be granted preliminary approval.

V. THE COURT SHOULD CERTIFY THE CLASS FOR SETTLEMENT PURPOSES

The court may make an order approving certification of a provisional settlement class after the preliminary settlement hearing. (California Rules of Court, Rule 3.769(d).) For settlement purposes, courts use a less stringent standard for certification of classes. (*Global Minerals & Metals Corp. v. Superior Court* (2003) 113 Cal.App.4th 836, 859.) "The reason for this is that no trial is anticipated in a settlement class case, so the case management issues inherent in the ascertainable class determination need not be confronted." (*Id.*; see also *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1161-1162 [affirming certification of class action for settlement purposes only].) Accordingly, this Court has discretion to certify Plaintiffs' class for settlement purposes only.

The requirements under California Code of Civil Procedure Section 382 are all met for the purposes of certifying this case for settlement purposes:

- Numerosity: The settlement class consists of approximately 132 California Class Members. Thus, the requirement of numerosity is easily met because joinder of 132 individual plaintiffs into a single case is otherwise impracticable in light of the circumstances of this case. The FCRA Class consists of approximately 143 individuals which is also impracticable to bring in a single case.

1 • Typicality: The claims of the class representative are typical of the claims of the
2 class members as a whole. The named Plaintiff suffered the same alleged violations (e.g. failure to
3 pay minimum and overtime wages and failure to pay overtime wages at the regular rate, failure to
4 pay meal and rest period premium wages for non-compliant meal and rest periods, failure to pay
5 timely wages during employment, failure to provide complete and accurate wage statements, and
6 failure to pay all wages due upon separation of employment) as the class as a whole did and, thus,
7 the claims of the named Plaintiff fairly represents the claims of the class as a whole. With respect to
8 the FCRA Class, each member of the class had their background checked by Defendant without a
9 proper disclosure.

10 • Ascertainability: The proposed “California Class” and “FCRA Class” are easily
11 ascertainable based on Defendant’s own payroll records and employment and application records.

12 • Adequacy: Plaintiff has proven to be an adequate class representative. He has
13 conducted himself diligently and responsibly in representing the class in this litigation, he
14 understands his fiduciary obligations, and he has actively participated in the prosecution of this
15 case. (Huether Dec. ¶35; See concurrently filed Declaration of Andrew Ledesma.) Plaintiff has
16 spent hours in meetings and conferences with counsel to get a better understanding of his work
17 environment and requirements. Plaintiff continues to be actively engaged in the ongoing settlement
18 negotiations following mediation that were ultimately required to finalize settlement. (*Id.*) Further,
19 Plaintiff does not have any interest that is adverse to the interests of the other class members. (*Id.*)
20 Moreover, proposed class counsel is adequate to represent the class for settlement purposes and has
21 been appointed as class counsel before by this Court as well as both State and Federal Courts.
22 (Huether Dec. ¶31.)

23 • Commonality: Many common issues of law and fact unite the class. The common
24 questions of law and fact include, but are not limited to:

- 25 1) Whether Defendant failed to pay minimum and overtime wages;
- 26 2) Whether Defendant failed to pay overtime wages at the regular rate of
 pay;
- 27 3) Whether Defendant failed to provide the Class Members meal and
28 rest periods and premium wages for missed meal and rest periods;

- 4) Whether Defendant failed to reimburse necessary business expenditures;
- 5) Whether Defendant failed to pay timely wages to Class Members;
- 6) Whether Defendant failed to provide the Class Members complete and accurate wage statements;
- 7) Whether Class Members are entitled to waiting time penalties for Defendant's failure to pay all wages upon separation of employment; and
- 8) Whether Defendant violated Business and Professions Code section 17200.
- 9) Whether Defendant provided a disclosure violative of the FCRA, ICRAA, and/or CCRAA.

- Superiority: A class action is superior to other available means for the fair and efficient adjudication of this controversy with respect to both the wage and hour claims and FCRA claims. Joinder of all members of each of the proposed class is impractical. Class treatment will permit a large number of similarly-situated persons to prosecute their common claims in a single forum simultaneously for settlement purposes without the unnecessary duplication of effort and expense that numerous individual actions would engender.

VI. THE PROPOSED CLASS NOTICE OF SETTLEMENT SHOULD BE APPROVED

The proposed Class Notice in the form attached to the Settlement as Exhibit 1, should be approved for dissemination to the Class Members. This document informs the Class of the terms of the Settlement, of their right to receive their proportional share of the Settlement and the manner in which to do so, of their right to request exclusion or to comment upon or object to the Settlement, and of their right to appear in person or by counsel at the final approval hearing and to be heard regarding approval of the Settlement. Adequate periods of time are provided by each of these procedures. Furthermore, the date and time of the Final Approval hearing will be inserted in the Notice will identify the information upon which the Class Member's share will be calculated as well as the estimated amount he or she can expect to receive if he or she chooses to participate in the settlement.

VII. THE PROPOSED ATTORNEY FEES AND COSTS ARE REASONABLE

Plaintiff's Counsel seeks attorneys' fees and costs award of one-third (1/3) of the Settlement Amount or Two Hundred Eighty-Three Thousand Three Hundred Thirty-Three Dollars

1 (\$283,333.00) and Class Counsel's costs not to exceed Twenty-Five Thousand Dollars (\$25,000),
2 for the time spent litigating this matter as well as expenses incurred in the prosecution of the action
3 thus far. Defendant will not object to an award of attorneys' fees and costs in these amounts. The
4 requested fee falls well within the historical range of attorneys' fee awards under the common fund
5 theory, which is generally from 20% to 50%. The requested fee is a fair compensation for
6 undertaking complex, risky, expensive, and time-consuming litigation on a contingent fee basis,
7 especially in light of the substantial benefits achieved by Plaintiff's counsel for the Class Members.
8 Plaintiff's counsel diligently litigated and investigated this case.

9 California courts have recognized that an appropriate method for awarding attorney's fees in
10 class actions is to award a percentage of the "common fund" created as a result of the settlement.
11 (*City & County of San Francisco v. Sweet* (1995) 12 Cal. 4th 105, 110-11; *Quinn v. State* (1975) 15
12 Cal. 3d 162, 168; *see also Apple Computer, Inc. v. Superior Court* (2005) 126 Cal. App. 4th 1253,
13 1270; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal. App. 4th 19, 26.) The basis of the
14 common fund is fairness to the successful litigant, who might otherwise receive no benefit because
15 his recovery might be consumed by the expenses; correlative prevention of an unfair advantage to
16 others who are entitled to share in the fund and who should bear their share of the burden of its
17 recovery; encouragement of the attorney for the successful litigant, who will be more willing to
18 undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he
19 is assured that he will be properly and directly compensated should his efforts be successful. (*City*
20 *& County of San Francisco v. Sweet, supra*, 12 Cal. 4th at 111.) In *Quinn*, the California Supreme
21 Court stated: "[O]ne who expends attorneys' fees in winning a suit which creates a fund from
22 which others derive benefits may require those passive beneficiaries to bear a fair share of the
23 litigation costs." (*Quinn v. State, supra*, 15 Cal. 3d at 167.) Similarly, in *Sweet*, the California
24 Supreme Court recognized that the common fund doctrine has been applied "consistently in
25 California when an action brought by one party creates a fund in which other persons are entitled to
26 share." (*City & County of San Francisco v. Sweet, supra*, 12 Cal. 4th at 110.)

27 Several courts have expressed frustration with the alternative "lodestar" approach for
28 deciding fee awards, which usually involves wading through voluminous and often indecipherable

1 time records. (*Lealao, supra*, 82 Cal. App. 4th at 31 n.5 [citing *In re Activision Sec. Litig.* (N.D.
2 Cal 1989)] 723 F. Supp. 1373, 1375].) The percentage approach is preferable to the lodestar
3 because: (1) it aligns the interests of class counsel and absent class members; (2) it encourages
4 efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement;
5 and (3) it reduces the demands on judicial resources. (*In re Activision Sec. Litig.*, 723 F. Supp. at
6 1378-79.) The Ninth Circuit now routinely uses the percentage of the common fund approach to
7 determine the award of attorney's fees. (*Lealao*, 82 Cal. App. 4th at 30-31; *see e.g., In re Pacific*
8 *Enters. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 378-79 [approving attorney's fee of 33%].)

9 Plaintiff's counsel's request for fees equal to 1/3 [33.33%] of the Gross Settlement Amount
10 is within the range of reasonableness. Historically, courts have awarded percentage fees in the
11 range of 20% to 50%, depending on the circumstances of the case. (*See In re Activision Sec. Litig.*,
12 *supra*, 723 F. Supp. at 1378.) According to Professor Newberg: "No general rule can be articulated
13 on what is a reasonable percentage of a common fund...Usually 50 per cent of the fund is the upper
14 limit on a reasonable fee award from a common fund, in order to assure that fees do not consume a
15 disproportionate part of the recovery obtained for the class, though somewhat larger percentages
16 are not unprecedented." (Newberg, *supra*, §14.6.)

17 Class Counsel have borne, and continue to bear, the entire risk and cost of litigation
18 associated with this class action on a pure contingency basis. The factual and legal issues posed in
19 this case were highly disputed, and there were also risks as to whether or not a class would be
20 certified, leaving a large number of putative class members unlikely to receive any recovery.

21 Based on Class Counsel's past experience in class action wage and hour litigation, it is safe
22 to state that Class Counsel is very likely to be called upon, after the Class Notice has been sent, to
23 expend substantial amounts of additional time to help Class Members understand the terms of the
24 proposed Settlement. It is also likely that, even after final approval of the Settlement has been
25 granted, Class Counsel will be called upon to expend additional amounts of time in the presentation
26 and resolution of contests and questions relating to Class Members' allocation under the terms of
27 the proposed Settlement, as to the amounts of individual claims and perhaps other individual
28 issues.

1 The Court should preliminarily approve the requested attorney's fees and costs, which are
2 justified by the results achieved, the complexity of the issues, the difficulty of the case, and the
3 great risk undertaken by Class Counsel. The requested attorneys' fees and costs will not be opposed
4 by Defendant, and are well within established guidelines. The Class Members will also be notified
5 of the requested amount and have an opportunity to object to the requested fees.

6 **VIII. THE REQUESTED SERVICE PAYMENT IS REASONABLE**

7 The named Plaintiff is entitled to a Service Payment for his service as class representative
8 and the risks associated with their role as Class Representative and named Plaintiff in this action.
9 Plaintiff understood and continues to understand his role as Class Representative, he has protected
10 the interests of Class Members during the pending of this matter and will continue to do so.
11 (Huether Dec. ¶38.) Plaintiff has spent hours in meetings and conferences with counsel to get a
12 better understanding of his work environment. (*Id.*) Even after mediation, he continued to be
13 engaged with counsel for the months of the continued negotiations that it took to ultimately finalize
14 a settlement as well as understanding and discussing the settlement agreement with their attorneys.
15 (*Id.*) Further, Plaintiff does not have any interest that is adverse to the interests of the other class
16 members. (*Id.*) Defendant will not oppose the application for an enhancement of \$10,000 to
17 Plaintiff as the Class Representative from the Gross Settlement Amount for his services to the
18 Class in this action. Class Counsel can attest that Plaintiff devoted a proportionate amount of time
19 and work assisting counsel in the case, communicating with counsel frequently, providing
20 documents and information regarding their employer and employment, which led to increase in the
21 value and ultimate success of the Settlement. (*Id.*)

22 **IX. PROPOSED SCHEDULE OF SETTLEMENT PROCEEDINGS**

23 The Parties propose the following schedule for the fairness hearing and final proceedings:

- 24 1. Not later than fifteen (15) calendar days after the Court grants Preliminary
25 Approval of the Settlement, Defendant will deliver the Class Data to the
Administrator, in the form of a Microsoft Excel spreadsheet. (Settlement, § 4.1.)
- 26 2. Using best efforts to perform as soon as possible, and in no event later than 14
27 days after receiving the Class Data, the Administrator will send to all Class
28 Members identified in the Class Data, via first-class United States Postal Service
("USPS") mail, the Class Notice. (Settlement, § 7.4.2.)

3. If a Class Member wishes to submit a Request for Exclusion or Objection they may do so within sixty (60) calendar days from the date the Class Notice is mailed to them ("Response Deadline"). (Settlement, § 1.43.)
4. The filing date for the Motion for Final Approval of the Class Action Settlement, and Motion for Final Approval of Plaintiff's Attorneys' Fees and Costs and Service Payment to the Class Representative will be determined by the Court.
5. The Final Fairness and Approval Hearing date will be determined by Court. The parties request that the Final Fairness and Approval Hearing be set approximately one hundred twenty (120) days following the Court's granting of preliminary approval of the proposed Class Action Settlement.

X. CONCLUSION

The proposed class action settlement is fair, adequate, and reasonable. It will result in fair and immediate payment to Class Members; it is non-collusive; and it was achieved as the result of informed, extensive, and arms' length negotiations conducted by counsel for respective parties who are experienced in wage and hour class action litigation. For the foregoing reasons, the parties respectfully request that the Court grant preliminary approval of the proposed Settlement, sign the proposed Order, approve and authorize mailing of the proposed Class Notice of Settlement and set a date for a final approval hearing.

Dated: January 17, 2023

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

By: 

Joseph Lavi, Esq.

Vincent C. Granberry, Esq.

Melissa A. Huether, Esq.

*Attorneys for Plaintiff Andrew Ledesma, on
behalf of himself and others similarly situated*