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on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

ANTOINE BRESSE, individually and on behalf of himself and all others similarly situated, Plaintiff, v. INFINITE COMPUTER SOLUTIONS, INC., a Delaware Corporation; and DOES 1-50, inclusive, Defendants.	Case No. 30-2022-01243447-CU-OE-CXC **CLASS ACTION** *Assigned for All Purposes To:* Hon. Melissa McCormick Dept.: CX-104 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND PAGA SETTLEMENT AGREEMENT** Date: November 07, 2024 Time: 2:00p.m. Dept: CX104 Trial: Not Set

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Antoine Bresse ("Plaintiff") seeks preliminary approval of the Class Action and PAGA Settlement Agreement ("Settlement" or " Settlement Agreement") which if approved, would provide considerable monetary relief for approximately 651[1] current and former non-exempt employees of Defendant Infinite Computer Solutions, Inc. ("Defendant") (Plaintiff and Defendant are collectively the "Parties.") The principal terms of the Settlement provide for:

1. Conditional certification of the Settlement Class ("Class") defined as: All current and former non-exempt employees of Infinite Computer Solutions, Inc. who worked in the state of California during the Class Period of January 31, 2018, to May 19, 2024. (Agreement, ¶ 1.5.)

2. A non-reversionary Gross Settlement Amount of $2,225,000. (Agreement, ¶ 1.22.) The Gross Settlement Amount includes:

    a. A Net Settlement Amount (the Gross Settlement Amount minus the requested Class Counsel Fees and Costs, Settlement Administration Expenses, the Class Representative Service Payment, Individual PAGA Payments, and the LWDA PAGA Payment) of approximately $1,318,000 will be allocated to Participating Class Members based on the number of workweeks worked during the Class Period. (Agreement, ¶ 1.28.) **The Entire Net Settlement Amount will be paid to all Class Members who do not opt out of the Settlement Class, and without the need to submit claims for payment.**

    b. Class Counsel fees in the amount of one-third of the Gross Settlement Amount (or $750,000), and litigation expenses not to exceed $25,000, to James Hawkins APLC. (Agreement, ¶ 3.2(a.))

    c. Settlement Administration Expenses not to exceed $9,500, to be paid to the jointly selected Settlement Administrator, Phoenix Class Action Administration Solutions. (Agreement, ¶ 3.2(c).)

    d. Class Representative Service Payment of $10,000 to Antoine Bresse for his service on behalf of the Settlement Class, the risks he took in bringing the action on behalf of the class, and for a general release of all claims arising out of his employment with Defendant. (Agreement, ¶ 3.2(a))

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[1] Based on its records, Defendant estimates that the workweek equivalents between January 31, 2018 and October 15, 2023 are approximately 50,245. If the number of workweeks increases by more than 10% during the Class Period, the settlement amount shall be increased by the percentage that the actual number of workweeks exceeds a 10% increase from the original estimate. For example, if the class size is 11% larger, the overall Settlement Amount shall be increased by 1%. In the alternative, Defendant may elect to end the Settlement Class Period to an earlier date such that the Escalator is not triggered." (Agreement, ¶ 8.)

e. PAGA Penalties in the amount of $112,500, with 75% ($84,375) allocated to the LWDA PAGA Payment and 25% ($28,125) allocated to the Individual PAGA Payments to Aggrieved Employees based on their PAGA Period Pay Periods. (Agreement, ¶ 3.2(e)) **The Entire PAGA Fund will be paid to all PAGA Group Members, and without the need to submit claims for payment.**

An objective evaluation of the Settlement confirms that the relief negotiated on the Class's behalf is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm's length with helpful guidance from Steve Mehta, Esq., a well-respected and highly sought-after class action mediator, and the Settlement confers substantial benefits to Class Members. This relief—an average Individual Class Payment of approximately $2,024.57 per Participating Class Member from the Net Settlement Amount—is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage and hour class actions. Moreover, by settling now rather than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being denied or of Defendant prevailing at trial, or of Plaintiff prevailing at trial but losing on appeal.

As discussed below, the Settlement satisfies all criteria for preliminary settlement approval under California law and falls within the range of reasonableness. Accordingly, Plaintiff respectfully request that this Court grant preliminary approval of the Settlement.

II. FACTS AND PROCEDURE

A. Brief Overview of the Litigation and Settlement Negotiations

Infinite Computer Solutions, Inc. is a global IT service provider offering services in the areas of application management outsourcing, infrastructure management outsourcing, product engineering services, and digital transformation services. The company has operations in California. (Hawkins Decl., ¶ 12.)

Plaintiff Antoine Bresse was employed by Infinite Computer Solutions as a non-exempt employee in California in 2020. (Bresse Decl., ¶ 2.)

On January 31, 2022, Plaintiff filed a complaint in the Superior Court of the State of California, County of Orange, alleging causes of action against Defendant for: (1) violation of the Fair Credit Reporting Act for failure to make proper disclosures [15 U.S.C. § 1681b(b)(2)(A)(i)]; (2) violation of the Fair Credit Reporting Act for failure to obtain proper authorization [15 U.S.C. § 1681b(b)(2)(A)(ii)]; (3) failure to make proper disclosure [California Civil Code §1786 et seq., Investigative Consumer Reporting Agencies Act]; (4) failure to make proper disclosure [California Civil Code §1785.1 et seq., California Consumer Credit Reporting Agencies Act]; (5) failure to pay minimum wages; (6) failure to pay overtime owed; (7) failure to provide lawful meal periods; (8) failure to authorize and permit rest periods; (9) failure to timely pay wages during employment; (10) failure to timely pay wages owed upon separation from employment; (11) failure to reimburse necessary expenses; (12) knowing and intentional failure to comply with itemized wage statement provisions; (13) violation of the Unfair Competition Law; and (14) civil penalties under the Private Attorneys General Act ("PAGA").

Defendant denies Plaintiff's allegations, denies that certification is proper, contends that its conduct was always lawful and denies any violation of the law, and denies any and all liability for the causes of action alleged. (Hawkins Decl., ¶ 15.)

On November 14, 2023, the Parties participated in an all-day mediation with experienced wage and hour mediator Steve Mehta. After a full day of arm's length negotiations, the Parties were unable to reach a settlement on their own, but ultimately accepted a mediator's proposal which led to the Agreement (Ex. 1) to settle the Action. (Hawkins Decl., ¶ 16.)

On or about January 11, 2024, Plaintiff submitted an amended notice to the Labor and Workforce Development Agency ("LWDA") to provide notice of additional facts, theories, and causes of action that were analyzed and negotiated in connection with the mediation. (Hawkins Decl., ¶ 17.)

In connection with this Settlement, the Parties have stipulated to Plaintiff's filing of a First Amended Complaint that includes all claims that were investigated and negotiated in connection with the mediation, including the claims asserted in Plaintiff's January 11, 2024 amended letter to Defendant and the LWDA, providing notice pursuant to Labor Code section 2699.3, subd.(a). (Hawkins Decl., ¶ 18.)

1. Composition of the Settlement Class

The proposed Settlement Class consists of all current and former non-exempt employees of Infinite Computer Solutions, Inc. who worked in the state of California during the Class

Period of January 31, 2018 through May 19, 2024. (Agreement, ¶ 1.5) There are approximately 651 Class Members, of which 617 are also Aggrieved Employees eligible to receive PAGA Penalties. (Hawkins Decl., ¶ 31.)

2. Settlement Consideration

Plaintiff and Defendant have agreed to settle the underlying class and PAGA claims in exchange for the Gross Settlement Amount of $2,225,000. The Gross Settlement Amount includes: (1) payments to Participating Class Members from the Net Settlement Amount based on the number of workweeks worked during the Class Period; (2) Class Counsel Fees not to exceed 33 1/3% of the Gross Settlement Amount (or $750,000) and litigation expenses not to exceed $25,000; (3) Settlement Administration Expenses not to exceed $9,500, to be paid to the jointly selected Settlement Administrator, Phoenix Class Action Administration Solutions; (4) PAGA Penalties in the amount of $112,500, with 75% ($84,375) allocated to the LWDA PAGA Payment and 25% ($28,125) allocated to the Individual PAGA Payments to the approximately 617 Aggrieved Employees; and (5) a Class Representative Service Payment of $10,000 to Plaintiff in recognition of his effort in prosecuting the Action on behalf of the Settlement Class and for executing a general release of claims. (Agreement, ¶¶ 1.22, 1.28, 3.2.)

Subject to the Court approving Class Counsel Fees and Costs, Settlement Administration Expenses, the Class Representative Service Payment, and the PAGA Penalties allocation, the Net Settlement Amount will be distributed to Participating Class Members based on the number of workweeks worked during the Class Period. (Agreement, ¶ 3.2(d).)

The Individual Class Payment for each Participating Class Member will be determined by multiplying the Workweek value by the number of Workweeks they individually worked during the Class Period. (Agreement, ¶ 3.2(d)(1).) Given that there are approximately 651 Class Members, the average Individual Class Payment from the Net Settlement Amount will be approximately $2,024.57.[2] This average Individual Class Payment is substantially greater than many other wage and hour class action settlements approved by California courts.[3]

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[2] $1,318,000 Net Settlement Amount / 651 Class Members.

[3] See, e.g., *Sandoval v. Nissho of Cal., Inc.*, Case No. 37-2009-00091861 (San Diego County Super. Ct. Dec. 7, 2010) (average net recovery of approximately $145); *Gomez v. Amadeus Salon, Inc*., Case No.

The Individual PAGA Payment for each of the 617 Aggrieved Employees will be determined by dividing the Aggrieved Employees' 25% share of PAGA Penalties ($28,125) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period, and multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. (Agreement, ¶ 3.2(e)(1).) The average Individual PAGA Payment for each of the 617 Aggrieved Employees will be approximately $45.58.[4]

3. Release by Plaintiff and Participating Class Members

In exchange for the Gross Settlement Amount, Plaintiff and Participating Class Members will agree to release the Released Class Claims[5] during the Class Period. (Agreement, ¶ 6.2.) The Agreement also includes an additional general release of all claims by Plaintiff. (Agreement, ¶ 6.1.)

All Aggrieved Employees, including Non-Participating Class Members who are Aggrieved Employees, will be deemed to release the Released PAGA Claims[6] during the PAGA

BC392297 (L.A. Super. Ct. July 23, 2010) (average net recovery of approximately $20); *Jones v. Bath & Body Works, Inc*., No. 2:13-cv-05206-FMO-AJW (C.D. Cal. July 11, 2016) (average net recovery of approximately $50); and *Palencia v. 99 Cents Only Stores*, No. 34-2010-00079619 (Sacramento County Super. Ct. Oct. 11, 2012) (average net recovery of approximately $80).

[4] $28,125 PAGA Penalties / 617 Aggrieved Employees = $45.58

[5] "Released Class Claims" means the claims released by Participating Class Members, and include all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint, including but not limited to: (1) claims for failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods or pay a premium in lieu thereof; (4) failure to authorize and permit rest periods or pay a premium in lieu thereof; (5) failure to timely pay final wages at the time of termination/end of employment; (6) failure to furnish accurate itemized wage statements; (7) failure to reimburse employees for business expenses; (8) unfair business practices; (9) claims for penalties or other remedies under California Labor Code sections 201-204, 206, 210, 212, 213, 218.5, 218.6, 221-224, 226, 226.3, 226.7, 245-249, 256, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1195, 1197, 1198, 2698 et seq., 2800, 2802, 2804 or any applicable Wage Order; and (10) failure to make proper disclosures or obtain authorization to conduct background checks in violation of ICRAA, CCRAA, and FCRA. (Agreement, ¶ 1.39.)

[6] "Released PAGA Claims" means all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notices and ascertained in the course of the Action, including, but not limited to: (1) claims for failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods or pay a premium in lieu thereof; (4) failure to authorize and permit rest periods or pay a premium in lieu thereof; (5) failure to timely pay final wages at the time of termination/end of employment; (6) failure to furnish accurate itemized wage statements; (7) failure to reimburse employees for business expenses; (8) unfair business practices; (9) claims for violation of California Labor Code sections 201-204, 206, 210, 212, 213, 218.5, 218.6, 221-224, 226, 226.3, 226.7, 245-249, 256, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1195, 1197, 1198, 2698 et seq., 2800, 2802, 2804 or any applicable Wage Order; or failure to make proper disclosures or obtain authorization to conduct background

Period. (Agreement, ¶ 6.3.)

III. ARGUMENT

A. The Court Should Preliminarily Approve the Proposed Class Action Settlement

1. Courts Review Class Action Settlements to Ensure that the Terms Are Fair, Adequate, and Reasonable

California Rule of Court ("Rule"), Rule 3.769 requires litigants to obtain court approval of class action settlements. Approval occurs in two steps: (1) an early "preliminary" review by the trial court; and (2) a subsequent "final" review after notice of the settlement has been distributed to class members for their comments and objections. (Cal. R. Ct. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the court first "preliminarily approves the settlement" and later "conducts a final approval hearing to inquire into the fairness of the proposed settlement").) The motion for preliminary approval must be accompanied by (1) the settlement agreement, (2) proposed notice to the class, and (3) the proposed order. (*Id.* at 3.769(c).) The motion must also identify any agreement concerning the payment of attorneys' fees. (*Id.* at 3.769(b).)

If the trial court grants preliminary approval of a settlement, Rule 3.769(f) requires the court to (1) schedule a final approval hearing and (2) approve the method of notice to the class of the hearing and "an explanation of the proposed settlement." The court must also approve a procedure for class members to file objections to the settlement. (*Id.* at 3.769(f).) At the final approval hearing, the court must conduct an inquiry into the fairness of the proposed settlement. (*Id.* at 3.769(g).)

Although Rule 3.769 does not provide detail as to the scope of review of the proposed settlement, preliminary approval is warranted if the settlement falls within a "reasonable range." (See *North County Contractor's Assn., Inc. v. Touchstone Ins. Services*, 27 Cal. App. 4th 1085, 1089-90 (1994); Conte & Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002) ("Newberg").) Reasonableness and fairness are presumed where, as here: (1) the settlement is

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checks in violation of ICRAA, CCRAA, and FCRA. (Agreement, ¶ 1.40.)

reached through "arms-length bargaining;" (2) investigation and discovery are "sufficient to allow counsel and the court to act intelligently;" (3) counsel is "experienced in similar litigation;" and (4) the percentage of objectors "is small" (collectively, "*Dunk* Factors"). (*Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802 (1996).)[7]

2. The Investigation and Discovery Are "Sufficient to Allow Counsel and The Court To Act Intelligently"

As set forth in greater detail in Class Counsel's declaration, based on the analysis of documents and class data produced by Defendants—including Plaintiff's personnel file, employment agreements, offer letters, disclosures, background check forms, wage statements, timekeeping records, Defendants' California labor policies and procedures manuals, employee handbooks, and a 33.3% sample of Class Members' time and pay records—Class Counsel was able to realistically assess the value of Plaintiff's claims and intelligently engage defense counsel in settlement discussions that culminated in the proposed settlement now before the Court. (Hawkins Decl., ¶¶ 11, 19-20, 26-30.)

By engaging in a thorough investigation and evaluation of Plaintiff's claims, Class Counsel can opine that the Settlement, for the consideration and on the terms set forth in the Settlement Agreement, is fair, reasonable, and adequate, and is in the best interests of Class Members in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation, various defenses asserted by Defendants. (Hawkins Decl., ¶¶ 33-35.)

3. The Settlement Was Reached Through Arm's-Length Bargaining in

[7] The presumption of fairness is consistent with California's public policy goal of favoring settlements. (*Stambaugh v. Super. Ct.*, 62 Cal. App. 3d 231, 236 (1976) ("the law wisely favors settlements"); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th at 1118 ("public policy generally favors the compromise of complex class action litigation"); *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) ("voluntary conciliation and settlement are the preferred means of dispute resolution . . . [t]his is especially true in complex class action litigation"); *Skulnick v. Roberts Express, Inc.*, 2 Cal. App. 4th 884, 891 (1992) ("public policy strongly discourages litigation and encourages settlement [because settlements] can produce peace and goodwill in the community while reducing the expense and persistency of litigation"). Additionally, in reviewing the fairness of a class action settlement, due regard should be given to what is "otherwise a private consensual agreement between the parties." *Cellphone Termination Fee Cases*, 180 Cal. App. 4th at 1117. The inquiry "must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Id.* at 1118.

Which All Parties Were Represented by Experienced Counsel

"[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed settlement's fairness." (*State of Cal. v. Levi Strauss & Co.*, 41 Cal. 3d 460, 482 (1986).) Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg, § 11.51.)

As mentioned above, the Parties participated in an all-day mediation with Steve Mehta, Esq., an experienced and highly sought after mediator of employment related class actions. Mr. Mehta helped manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides.[8] At all times, the Parties' negotiations were adversarial and non-collusive. (Hawkins Decl., ¶ 25.) The Parties were represented by experienced class action counsel throughout the negotiations resulting in this Settlement. Plaintiff is represented by the James Hawkins APLC. Class Counsel are seasoned class action attorneys who regularly litigate employment claims through certification and on the merits and have considerable experience settling employment related class actions. (Hawkins Decl., ¶ 3-10.) Defendant is represented by Jackson Lewis P.C., a respected defense firm.

B. The Consideration Provided for the Class Claims Is Fair and Reasonable in Light of the Amount in Controversy Discounted by the Risks of Continued Litigation

In seeking approval, a settling party must provide sufficient information to "enable the court to make an independent assessment of the adequacy of the settlement terms." (*Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 131-32 (2008).) However, "[i]t is well-settled law that a cash settlement amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or unfair." (*See Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982).)

[8] *See In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 948 (9th Cir. 2011) (the presence of a neutral mediator is a factor weighing in favor of finding of no collusion); *In re Apple Computer, Inc. Derivative Litig.*, No. C 06-4128 JF (HRL), 2008 WL 4820784, at *3 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably against any inference of a collusive settlement); *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (a "mediator's involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure.").

Settling parties are not, however, required to partake in a hypothetical accounting exercise: "***Kullar* does not … require any such explicit statement of [maximum] value;** it requires a record which allows 'an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.'" (*Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal. App. 4th 399, 409-10 (2010) (quoting *Kullar*, 168 Cal. App. 4th at 120 (emphasis added)).) Overall, "the most important factor" in determining "whether a settlement is fair and reasonable" is the "strength of the case for plaintiffs on the merits, balanced against the amount offered in the settlement." (*Id*. at 409 n.6 (quoting *Kullar*, 168 Cal. App. 4th at 130).) As explained in detail below, the Gross Settlement Amount is within the range of reasonableness in light of the nature and magnitude of the claims being settled and the various potential impediments to recovery.

Ultimately, Class Counsel determined an appropriate range of recovery for settlement purposes by offsetting Defendant's maximum theoretical liability by: (i) the strength of the defenses to the merits of Plaintiff's claims; (ii) the risk of class certification being denied; (iii) the risk of losing on any of a number of dispositive motions that could have been brought between certification and trial (e.g., motions to decertify the class, motions for summary judgment, and/or motions in limine) that might have eliminated all or some of Plaintiff's claims, or barred evidence and testimony in support of the claims; (iv) the risk of losing at trial; (v) the chances of a favorable verdict being reversed on appeal; and (vi) the difficulties attendant to collecting on a judgment (collectively, the "Discount Factors"). Class Counsel estimated Defendant's Realistic Exposure (taking into account the Discount Factors) to be approximately $4,706,922.25, as such the Gross Settlement Amount is approximately 47% of the Realistic Exposure. (See Ex. 3, Kullar Analysis.) Plaintiff respectfully posits that this Settlement is an excellent result for the Class.

1. Assessment of the Background Check Claims

Plaintiff asserts that Defendants improperly conducted background checks on Plaintiff and Class Members during their employment application process, in violation of the Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681 et seq., the California Investigative Consumer

Reporting Agencies Act (ICRAA), Cal. Civ. Code § 1786 et seq., and the California Consumer Credit Reporting Agencies Act (CCRAA), Cal. Civ. Code § 1785.1 et seq. Specifically, Plaintiff alleges that a background check was performed on Plaintiff and the putative class members but Defendant did not provide putative class members with proper disclosures as provided by the FCRA, ICRAA, and CCRA. Plaintiff contends that the notice documents contain extraneous language as they provide employees with disclosures for multiple states and require the acknowledgment of inapplicable state laws.

Defendant counters that the background check disclosure form provided to Plaintiff and the putative class members was clear and conspicuous and complied with the requirements set forth by the FCRA, ICRAA, and CCRA. The inclusion of disclosures for multiple states was intended to ensure comprehensive compliance with various state laws, not to confuse the applicants and, as a matter of fact, no Class Member was confused or suffered injury. Defendant asserts that the form was designed to inform applicants adequately, distinguishing federal disclosures from state-specific information, thus adhering to the guidelines provided by the FTC. Efforts were made to avoid including extraneous information and to maintain the disclosures' straightforward nature. Defendant contends there is no violation of the FCRA, ICRAA, or CCRA.

Defendant contends that any violation, which it denied, was not willful and that there is no basis for statutory damages. Plaintiff, on the other hand, contends that statutory damages of $1000 per violation serve both a compensatory and punitive function, as Defendant's actions were willful. However, Defendant contends that any alleged violations were not willful and that it made good faith efforts to comply with the FCRA, ICRAA, and CCRA, including consulting legal counsel and following industry standards. Any potential ambiguity in the statutory texts could have led to a reasonable misunderstanding, and Defendant acted based on the available information and interpretation of the laws. Defendant maintains that any violation of the FCRA was not willful, referencing the Supreme Court's standard in *Safeco Insurance Co. of America v. Burr* which requires a showing of reckless disregard for the law, substantially greater than mere negligence (*Safeco Insurance Co. of America v. Burr,* 551 U.S. 47, 69 (2007)).)

Defendant concludes that, even if statutory damages were to be awarded, the potential for statutory damages is minimal, suggesting only the lower statutory limit of $100 per class member might be justifiable given the lack of substantial harm and lack of willfulness. Defendant further contended that Plaintiff could not establish actual harm from the alleged violations and, as such, lacked Article III standing to pursue a claim under the FCRA.

Defendant's counterarguments, if accepted, significantly undermine Plaintiff's claims. Considering the possibility that Defendant did not violate the FCRA, or that any violations were not willful and resulted in minimal or no damages, Plaintiff needed to carefully evaluate the risks of continuing litigation. This assessment also took into account the ongoing dispute regarding both the occurrence of violations and the extent of damages per incident.

Considering Defendant's positions and counterarguments as well as various discount factors such as the strength of Defendant's defenses, the risk of losing class certification, and the risk of losing at trial, Plaintiff determined Defendant's Realistic Exposure for this claim to be approximately $162,750. (Ex. 3, Kullar Analysis.)

2. Assessment of the Meal Period and Rest Period Claims

Plaintiff contends that Defendant failed to provide duty-free 30-minute meal periods and 10-minute rest periods. Employees must be provided the opportunity to take uninterrupted full 30-minute meal periods and net 10-minute rest periods for each qualifying shift. In *Brinker* and *Augustus*, the California Supreme Court ruled that, "[d]uring meal [and] rest periods, employers must relieve their employees of all duties and relinquish any control over how employees spend their break time." (See *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 260 (2016) (citing *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal.4th 1004, 1038-1039 (2012)).) Plaintiff's position is that Defendant's policies and practices failed to provide compliant meal and rest periods, and that employees were not relieved of all duties during these breaks.

In addition to Defendant's general denial of the allegations, Defendant contends that employees were provided with compliant meal and rest periods in accordance with company policy. Defendant claims that the Court would have had to probe into the duration and circumstances of each employee's meal period and rest period one-by-one to determine whether any violations occurred, making a trial infeasible and unmanageable. Defendant argues that through employee declarations, the company would have proven that employees were provided with compliant breaks and any missed or non-compliant breaks were a result of employee choice rather than company policy or practice. Defendant further argues that the written break policies and practices complied with California law and relieved employees of all duties during breaks.

A substantial risk existed that Defendant could prove that the break claims were individualized and/or any failure to take compliant breaks was voluntary rather than a consequence of Defendant's policies or practices. Further, Defendant argues that the company already paid premiums any time company records demonstrated a possible meal period or rest period violation.

Considering Defendant's positions and counterarguments as well as various discount factors such as the strength of Defendant's defenses, the risk of losing class certification, and the risk of losing at trial, Plaintiff determined Defendant's Realistic Exposure for the meal and rest break claims to be approximately $1,233,514.75 each. (Ex. 3, Kullar Analysis.)

3. Assessment of the Unpaid Wages and Overtime Claims

Plaintiff contends—and Defendant disagrees—that Defendant failed to compensate employees for all hours worked during their shifts. In California, employees must be paid for all "hours worked." "Hours worked" is "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." (Cal. Code Regs. tit. 8, § 11070(2)(G).) Plaintiff argues that Defendant required employees to perform work off-the-clock, such as preparing for shifts, completing tasks after shifts ended, and working during unpaid meal periods. Defendant allegedly failed to pay employees for this time despite it being compensable time under the employer's control.

Further, Labor Code sections 510 and 1198 required Defendant to pay employees working more than eight hours in a day and/or more than forty hours in a workweek overtime compensation at a rate of one and one-half times their regular rate of pay. Off-the-clock work impacts overtime wages in shifts that qualify for overtime. For the same reasons that Defendant allegedly did not pay for all time worked, Defendant also allegedly failed to pay all overtime wages.

Defendant's counterarguments warranted careful consideration. Defendant maintains that written policies forbade employees from working off-the-clock and during meal periods. Defendant argues that violating these policies constitutes a disciplinary offense. Defendant disputes that employees performed work during meal periods, as they contend that employees were relieved of all duties during breaks as required by law and company policy.

Defendant's counterarguments, if accepted, could defeat Plaintiff's claims. To the extent employees worked off-the-clock, Plaintiff had to weigh the risks of continued litigation with Defendant's contention that this conduct was prohibited by company policy and never required.

Considering Defendant's positions and counterarguments as well as various discount factors such as the strength of Defendant's defenses, the risk of losing class certification, and the risk of losing at trial, Plaintiff determined Defendant's Realistic Exposure for the Unpaid Wages and Overtime Claims to be approximately $173,219.75 and $349,045.50, respectively. (Ex. 3, Kullar Analysis.)

4. Assessment of the Untimely Payment of Wages at Termination Claim

The claim for the untimely payment of wages at termination is derivative in nature. Thus, all of the merits-based risks associated with the underlying unpaid wages and break claims attach equally to the claims for late pay under Labor Code sections 201, 202, 203, and 204.

Considering Defendant's positions and counterarguments as well as various discount factors such as the strength of Defendant's defenses, the risk of losing class certification, and the risk of losing at trial, Plaintiff determined Defendant's Realistic Exposure for the untimely payment of wages at termination claims to be $712,932. (Ex. 3, Kullar Analysis.)

5. Assessment of the Wage Statement Claim

Plaintiff alleges that Defendant failed to properly itemize wage statements in violation of Labor Code section 226(a). The above practices give rise to derivative wage statement violations, thus, the merits-based risks associated with the underlying unpaid wages and break claims attach equally to the wage statement claim.

Defendant contends that the derivative wage statement claim is only as strong as the underlying predicate claims, and therefore all the affirmative defenses to the preceding allegations apply equally.

Plaintiff also asserted a standalone wage statement claim based on alleged inaccurately itemized total hours worked and at times inaccurate rates of pay. Defendant argues that there is no viable standalone wage statement claim because the wage statements' total hours itemization complies with the Labor Code and contained sufficient information for employees to determine rates of pay and hours worked without resorting to information outside of their wage statements. (See *Morgan v. United Retail Inc.*, 186 Cal. App. 4th 1136 (2010).)

Considering Defendant's positions and counterarguments as well as various discount factors such as the strength of Defendant's defenses, the risk of losing class certification, and the risk of losing at trial, Plaintiff determined Defendant's Realistic Exposure for the Wage Statement Claim to be $147,487.50 (Ex. 3, Kullar Analysis.)

6. Assessment of the Inaccurate Pay and Time Records Claim

Plaintiff alleges Defendant failed to maintain accurate payroll and time records per Labor Code sections 1174.5, 1198 and Wage Order 11070(7). Plaintiff contends that Defendant's payroll records did not reflect the daily hours employees worked as a result of failing to record all hours worked and/or correctly list the gross and net wages earned by them. The inaccurate payroll and time records claim is derivative of Plaintiff's wage claims, e.g., overtime, minimum wage, and meal period and rest period violations, and the arguments Defendant could raise for each of those claims apply here.

Considering Defendant's positions and counterarguments as well as various discount factors such as the strength of Defendant's defenses, the risk of losing class certification, and the risk of losing at trial, Plaintiff determined Defendant's Realistic Exposure of the inaccurate pay and records claim to be approximately $81,375. (Ex. 3, Kullar Analysis.)

7. Assessment of the Unreimbursed Business Expense Claim

Plaintiff contends that Defendant did not reimburse employees for all necessary business expenses incurred in the performance of their job duties. Labor Code section 2802 requires employers, like Defendant, to reimburse employees for all necessary expenditures and losses incurred in the direct consequence of discharging their duties. Plaintiff argues that Defendant failed to reimburse employees for expenses such as use of personal cell phones, internet, and other home office expenses necessary to carry out job duties while working remotely.

Defendant denies Plaintiff's allegations and argues that employees were reimbursed for any necessary business expenses in accordance with company policy. According to Defendant, Defendant maintained a compliant policy and employees were instructed to submit any necessary business expenses for reimbursement. Any employees who claim to have not been reimbursed did not follow the policy and present individualized claims.

Considering Defendant's positions and counterarguments as well as various discount factors such as the strength of Defendant's defenses, the risk of losing class certification, and the risk of losing at trial, Plaintiff determined Defendant’s Realistic Exposure for the unreimbursed business expenses claim to be approximately $94,208. (Ex. 3, Kullar Analysis.)

C. The Consideration Provided for the PAGA Claim Is Fair and Reasonable In Light of the Amount in Controversy Discounted by the Risks of Continued Litigation

As the above analysis demonstrates, Plaintiff objectively and knowledgeably balanced the strengths and weaknesses of the claims against the risks of continued litigation and determined a realistic range of settlement recovery. The PAGA Settlement Amount of $112,500 meets PAGA's objectives by imposing sufficient civil penalties "to punish and deter" Defendant from future alleged Labor Code violations, while also ensuring that the penalties are not "unjust, arbitrary and oppressive, or confiscatory." (Cal. Lab. Code § 2699(e)(2).)

While Plaintiff and Class Counsel believe that the PAGA claims are meritorious, Plaintiff recognizes the significant risk that the Court could reduce penalties under Labor Code section 2699(e)(2) or find no liability on some or all of the theories of liability, and/or find the case unmanageable and therefore not appropriate to continue as a representative action. Furthermore, a legitimate controversy exists as to each of the predicate Labor Code violations underlying Plaintiff's PAGA claims. The possibility that no liability is found is therefore a risk. Continued litigation would also delay payment to the LWDA and the Aggrieved Employees pending trial and, most likely, appellate proceedings.

Defendant would also argue for a reduction of any PAGA penalties, as the Court has the power to reduce PAGA penalties to ensure that they are not "unjust, arbitrary and oppressive, or confiscatory." See Cal. Lab. Code § 2699(e) ("…a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.") Even when plaintiffs have prevailed at trial on PAGA claims, courts have routinely exercised their discretion to significantly reduce the amount of PAGA penalties awarded to as little as $5.00 per pay period. (See, e.g., *Carrington v. Starbucks Corp.*, et al., San Diego County Superior Court, Case No. 37-2014-00018637-CU-OE-CTL (Apr. 3, 2017) (holding that the plaintiff was only entitled to collect the reduced penalty amount of $5.00 for each pay period in which a meal period violation occurred; the plaintiff requested penalties in excess of $70 million and the court reduced the award, stating that awarding the maximum penalty would be unjust, arbitrary, and oppressive based on the defendant's good faith attempts to comply with the law; the trial court's reduced award of $150,000 was affirmed on appeal and reflected 0.2% of the total recoverable penalties sought); compare *Fleming v. Covidien, Inc.*, 2011 WL 7563047, at *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties by 82%); see also, *Kaanaana v. Barrett Business Services*, Inc., 29 Cal. App. 5th 778, 788, 809 (2018) (appellate court affirmed trial court's reduction of PAGA civil penalties to 13% of the total recoverable penalties).) Defendant also contends that if the case were to continue in litigation, it would be able to show that it took its obligations to comply with the law seriously and proactively kept its policies updated and compliant with California's evolving Labor Code. As such, if Plaintiff were able to prevail on the merits of the PAGA claims, the Court would likely reduce the maximum penalty allowed.

Taking into account potential discounts for liability/manageability risks and the Court's discretionary reduction based on appellate decisions like *Kaanaana* and *Carrington*,[9] the realistic maximum PAGA exposure is approximately $518,875. Plaintiff's PAGA recovery here of $112,500 is approximately 22% of that maximum exposure. The settlement amount recovered is approximately 5% of the Gross Settlement Amount, well above the percentage approved by other courts.[10]

The proposed Gross Settlement Amount of $2,225,000 and PAGA Settlement Amount of $112,500 account for the realistic exposure, the real impediments of succeeding on the merits, and reflect an appropriate, balanced, and reasonable settlement value of the PAGA claims. The settlement amount fits squarely within the "remedial purpose" of PAGA of enforcing compliance with important employee protections in the Labor Code and Wage Order. Accordingly, the Gross Settlement Amount is fair, reasonable, and adequate.

D. The Court Should Preliminarily Approve the Negotiated Class Representative Service Payment

Class Representative Service Payments "are fairly typical in class action cases." (*Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1393 (2010) (affirming incentive awards of $10,000); *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958 (9th Cir. 2009), citing 4 Newberg on Class Actions (4th ed. 2002) § 11:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53 UCLA L. Rev. 1303 (2006).) Service payments "are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." (*Rodriguez*, 563

[9] The reduction in those two cases resulted in an average recovery of 6.6% of the exposure.

[10] The percentage of the Settlement Amount allocated to the settlement of Plaintiffs' claims for PAGA penalties is substantially higher than allocations approved by other California courts. (See, e.g., *Parra v. Aero Port Services, Inc.*, No. BC483451 (LASC, April 20, 2015; Judge Jane Johnson) (gross settlement fund of approximately $1,458,900, of which $5,000 (or 0.3%) was allocated to the settlement of PAGA penalties); *Thompson v. Smart & Final, Inc.,* No. BC497198 (LASC, Nov. 18, 2014; Judge William F. Highberger) (gross settlement fund of $3,095,000, of which approximately $13,333 (or 0.4%) was allocated to the settlement of PAGA penalties); *Chavez v. Vallarta Food Enterprises, Inc*., No. BC490630 (LASC, Nov. 10, 2014; Judge William F. Highberger) (gross settlement fund of $1,545,900, of which $10,000 (or 0.65%) was allocated to the settlement of PAGA penalties); *Sanchez v. Shakey's USA, Inc*., No. BC424205 (LASC, July 30, 2014; Judge Amy D. Hogue) (gross settlement fund of $1,650,000, of which $6,667 (or 0.4%) was allocated to the settlement of PAGA penalties); *Coleman v. Estes Express Lines, Inc*., No. BC429042 (LASC, Oct. 3, 2013; Judge Kenneth R. Freeman) (gross settlement fund of $1,535,000, of which $1,000 (or 0.1%) was allocated to the settlement of PAGA penalties). Here the percentage is approximately 5.1%.

F.3d at 958–59. "[T]he rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the … risk they have incurred in conferring a benefit on other members of the class." (*Clark v. American Residential Services LLC*, 175 Cal. App. 4th 785, 806 (2009).)

Approximately 651 current and former employees will share a $1,318,000 Net Settlement Amount due entirely to the effort and commitment by Plaintiff Antoine Bresse and his Counsel. Subject to Court approval, the Settlement provides for a Class Representative Service Payment of $10,000 to Plaintiff. (Agreement, ¶ 3.2(a).) The Class Representative Service Payment is fair and reasonable compensation for Plaintiff's effort in pursuing the Action, assisting counsel with the litigation and settlement, regularly conferring with counsel on the status of the case and the strategies for prosecuting the claims, and reviewing the proposed settlement to ensure that its terms are fair and provide adequate relief for the Class. (Hawkins Decl., ¶¶ 32-35; Bresse Decl., ¶¶ 1-13.) Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated Class Representative Service Payment.

E. The Court Should Preliminarily Approve the Negotiated Class Counsel Fees and Costs

The purpose of an attorneys' fee award in class action litigation is to reward counsel who took the risk of non-payment and invested in a case that achieved a substantial positive result for the class. "Fee awards in class actions average around one-third of the recovery regardless of whether the percentage method or the lodestar method is used." (*Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal. App. 5th 521, 545 (2021) (quoting *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, fn. 11 (2008)) (internal quotations omitted).) Consistent with that observation, California courts routinely award attorneys' fees equaling one-third of the gross settlement amount. (*See*, *e.g. Laffitte v. Robert Half Internat. Inc.*, 231 Cal. App. 4th 860, 871 (2016) ("33 1/3 percent of the common fund is consistent with, and in the range of, awards in other class action lawsuits"); *Chavez*, 162 Cal. App. 4th at 66 n.11 ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."); Eisenberg & Miller, *Attorney Fees in Class*

Action Settlements: An Empirical Study, J. of Empirical Legal Studies, Vol. 1, Issue 1, 27-78, March 2004, at 35 (independent studies of class action litigation nationwide conclude that fees representing one-third of the total recovery is consistent with market rates).) Notably, the California Supreme Court in *Laffitte v. Robert Half Internat. Inc.* affirmed a fee award representing one-third of the fund. (*Laffitte v. Robert Half Internat. Inc.*, 1 Cal. 5th 480 (2016).)

Class Counsel, James Hawkins APLC, are experienced in employment related class actions. (Hawkins Decl., ¶ 3) At final approval, Plaintiff will seek Court-approval of Class Counsel Fees in the amount of one-third of the Gross Settlement Amount (or $750,000), and costs and expenses not to exceed $25,000.

F. California Law Authorizes Provisional Certification for Settlement Purposes

1. The California Standard for Class Certification

Class actions are statutorily authorized "when the question is one of common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court." (Cal. Civ. Proc. Code § 382; *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1332 (2008).) Class certification is appropriate when there is an "ascertainable class and a well-defined community of interest among class members." (*Sav-On Drug Stores, Inc. v. Super. Ct.*, 34 Cal. 4th 319, 326 (2004).)

Conditional certification of the proposed Settlement Class is particularly warranted here given the relatively relaxed standard for certification at the preliminary approval stage. (*See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794 (1996) (courts can apply a "lesser standard of scrutiny" for class certification in settlement cases).) In *Dunk*, the California Court of Appeal specifically rejected the argument that the standard for certifying a class for purposes of settlement is identical to the standard for certifying the same class for purposes of a contested motion during litgiation. (*Id.* at n19.)

2. The Proposed Settlement Class Is Ascertainable and There Is a Well-Defined Community of Interest Among Class Members

Whether a class is "ascertainable" within the meaning of Code of Civil Procedure section 382 is "determined by examining (1) the class definition, (2) the size of the class, and (3) the means available for identifying class members." (*Lee*, 166 Cal. App. 4th at 1334.) Class members are ascertainable where they may be readily identified by reference to records. (*Id.)*

The community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) a class representative with claims or defenses typical of the class; and (3) a class representative and counsel who can adequately represent the class. (Cal. Civ. Proc. Code § 382.)

In April of 2012, the California Supreme Court expounded on the element of predominance:

> The "ultimate question" the element of predominance presents is whether "the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants."

(Brinker Rest. Corp. v. Super. Ct., 53 Cal. 4th 1004, 1021 (2012) (citations omitted).)

The proposed Settlement Class consists of all current and former non-exempt employees of Infinite Computer Solutions, Inc. who worked in the state of California during the Class Period of January 31, 2018 through May 19, 2024. (Agreement, ¶ 1.5.) Because all Class Members are either current or former employees of Defendant, the class is readily ascertainable from Defendant's regular business records.

Here, common issues of fact and law predominate because the statutes relating to each of Plaintiff's claims, including the background check claims under the Fair Credit Reporting Act, Investigative Consumer Reporting Agencies Act, and Consumer Credit Reporting Agencies Act, as well as the wage and hour claims, and Defendant's defenses, apply with equal force and effect to all Class Members. Factually, Plaintiff contends that Defendant's policies and practices regarding background checks and wage and hour issues apply class-wide and Defendant's liability can be determined by facts common to all members of the class. These issues are both numerous and substantial, and a class action is the most advantageous method of dealing with the claims of the Settlement Class Members.

Plaintiff's background check and wage and hour claims are typical of the proposed Settlement Class because they arise from the same factual bases and are based on the same legal theories applicable to the other Class Members. Likewise, Plaintiff's interests are entirely coextensive with the interests of the Class. Plaintiff maintains that he was injured by the same company-wide practices to which the proposed Settlement Class was subject and seeks the same relief.

Plaintiff has already demonstrated his ability to advocate for the interests of the Class by initiating this litigation, undertaking representative discovery, and evaluating the proposed settlement to assure that it is fair. Additionally, Plaintiff is represented by competent counsel who have extensive experience in litigating background check and wage and hour class action cases. (Hawkins Decl., ¶¶ 3-10.) Plaintiff's Counsel have successfully briefed, argued, certified, and gained state and federal court settlement approval of the same class-wide causes of action that are at issue in this case. (Id.) Plaintiff's Counsel's background check and wage and hour class action expertise establishes that they are well qualified to represent the interests of this Class.

3. The Proposed Notice Properly Informs Class Members about the Case and the Settlement

Class members are entitled to the best practical notice under the circumstances. (*Kass v. Young*, 67 Cal. App. 3d 100, 106 (1977).) The purpose of the notice is to give class members sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. (*Trotsky v. Los Angeles Fed. Savings & Loan Assn.*, 48 Cal. App. 3d 143, 151-52 (1975).) The notice must advise class members "that they may be excluded from the class if they so request and that they will be bound by the judgment, whether favorable or not, if they do not request exclusion." (*Kass*, 67 Cal. App. 3d at 106.) In a case such as this involving a significant number of class members, service of the class notice by mail is a reliable means. (*Chance v. Super. Ct.*, 58 Cal. 2d 275, 290 (1962).)[11]

The Parties have jointly drafted the Notice of Class Action Settlement ("Class Notice")

[11] *Chance v. Super. Ct.*, 58 Cal. 2d 275, 290 (1962). Due process does not require that each Class Member actually receive a notice, but rather a procedure reasonably certain to reach Class Members. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1789, at 253 (2d ed. 1986). If appropriate notice is given, Class Members will be bound by the judgment even if they never actually receive the notice. *Fontana v. Elrod*, 826 F.2d 729, 732 (7th Cir. 1987).

which fairly and neutrally informs Class Members of their rights and remedies in this action.[12] In the event Class Notices are returned as undeliverable, the Settlement Administrator will attempt to locate a current address using, among other resources, a skip-trace search. Accordingly, both the method of disseminating the Class Notice and content of the Class Notice satisfy due process and the requirements of California law. (*See* Cal. R. Ct. 3.776(e)-(f); *State of Cal. v. Levi Strauss*, 41 Cal. 3d 460, 485 (1986) (the class notice must "fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members.").)

IV. CONCLUSION

The Parties have negotiated a fair and reasonable settlement of claims. Having appropriately presented the materials and information necessary for preliminarily approval, the Parties request that the Court preliminarily approve the settlement.

Dated: July 15, 2024

Respectfully submitted,

JAMES HAWKINS APLC

By: ______________________

James Hawkins
Christina Lucio
Eric Tims

Attorneys for Plaintiff ANTOINE BRESSE

[12] The proposed Class Notice will be mailed to all Class Members by First Class mail and will include information regarding the nature of the lawsuit, a summary of the substance of the Settlement's terms, the class definition, the procedure and time period within which to submit Requests for Exclusions or objections to the Settlement, the date for the final approval hearing, the formula used to calculate settlement payments, and the terms and scope of the Released Claims. (Agreement, Exhibit A.)