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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN DIEGO-CENTRAL DIVISION

10 VERNON BARNETT, individually and)
11 as an aggrieved employee pursuant to the)
12 Private Attorneys General Act ("PAGA"))
13 on behalf of the State of California and)
14 other aggrieved employees,)

15 Plaintiffs,

16 vs.

17 QW INSURANCE SOLUTIONS, LLC,)
18 a Washington limited liability company;)
19 LENDINGTREE INC., a Delaware)
20 corporation; LENDINGTREE LLC, a)
21 Delaware limited liability company; and)
22 DOES 3 through 50,)

23 Defendants.

Case No.: 37-2022-00019924-CU-OE-CTL

Judge: Hon. Katherine Bacal
Dept. C-69

**PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF PRELIMINARY
APPROVAL OF CLASS ACTION
AND PAGA SETTLEMENT**

Judge: Hon. Katherine Bacal
Dept.: C-69
Hearing Date: March 22, 2024
Hearing Time: 1:30 p.m.

Complaint Filed: May 25, 2022
Trial Date: NA
Discovery Cutoff: NA

[Decl. of Thomas D. Rutledge,
[Proposed] Order, and Not. of Mot. filed
concurrently herewith]

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1 **I. INTRODUCTION.**

2 Plaintiff Vernon Barnett, individually and on behalf of all others similarly
3 situated (Plaintiffs), very respectfully request court approval of the Settlement¹ of this
4 Fair Credit Reporting Act (FCRA) and Wage and Hour class action and Private
5 Attorney General Act (PAGA) action against Defendants QW Insurance Solutions,
6 LLC, LendingTree, Inc. and LendingTree, LLC (collectively, “Defendants”). The
7 Settlement establishes a \$450,000 non-reversionary Gross Settlement Fund for the
8 benefit of the Class Members -- a FCRA Class and Wage and Hour Class -- and
9 Aggrieved Employees. Plaintiffs are informed there are approximately 1023 Class
10 Members in the FCRA Class, who will receive a net recovery of approximately \$23
11 per person. Plaintiffs are informed there are approximately 53 Class Members in the
12 Wage and Hour Class and there are 2816 workweeks within the Wage and Hour Class
13 Period, which is a workweek value of approximately \$71.75. Additionally, Plaintiffs
14 are informed there are approximately 35 Aggrieved Employees within the PAGA
15 Period. The PAGA Award is \$20,000, of which \$5,000 will be awarded to Aggrieved
16 Employees, divided on a *pro rata*, payroll period basis, and \$15,000 will be awarded
17 to the LWDA. Class Members and Aggrieved Employees will be paid
18 *automatically*—no need to submit a claim.

19 The proposed Settlement is fair, reasonable, and provides Class Members and
20 Aggrieved Employees with outstanding relief. Plaintiffs very respectfully request this
21 Honorable Court to preliminarily approve the settlement regarding the class action
22 claims and PAGA settlement.

23 **II. FACTUAL BACKGROUND.**

24 Plaintiff Vernon Barnett applied to work for the Defendants. During the
25 application process, Plaintiff Barnett alleges that Defendants used an unlawful
26

27 ¹ Unless otherwise defined herein, capitalized terms have the same meanings as those set forth in the Parties’
28 Class Action Settlement Agreement (“Agreement,” “Settlement,” or “Settlement Agreement”), attached to the
Declaration of Thomas D. Rutledge as Exhibit 1.

1 disclosure form to procure Plaintiff's investigative consumer report in violation of the
2 Fair Credit Reporting Act (FCRA) and the Investigative Consumer Reporting
3 Agencies Act (ICRAA) under Civ. Code § 1786, *et seq.* As alleged in the Third
4 Amended Complaint (TAC), Defendants provided Plaintiff Barnett with a document
5 containing unlawful extraneous information in violation of the FCRA and ICRAA.
6 Plaintiff Barnett alleges that Defendants used the same or similar form to procure
7 consumer reports on other FCRA Class Members as part of its standard practice and
8 policy. (TAC, ¶¶ 1-58, 149-162.)

9 The TAC also alleges that Plaintiff Barnett is Defendants' former employee.
10 During his employment, Plaintiff Barnett also contends, among other things, that
11 Defendants underpaid his overtime, failed to pay minimum/regular wages, issued
12 unlawful wage and earning statements, committed violations of the meal and rest
13 break laws, failed to pay wages in a timely manner, and failed to reimburse him.
14 (TAC, ¶¶ 1-21, 59-114, 171-267.)

15 **III. PROCEDURAL HISTORY & SETTLEMENT NEGOTIATIONS.**

16 On May 25, 2022, Plaintiff Barnett commenced this action. (ROA #1.) His
17 complaint alleged individual and class claims for California Labor Code violations.
18 Plaintiff also filed an individual claim under the California Investigative Consumer
19 Reporting Agencies Act, Civil Code § 1786, *et seq.* (ICRAA). On May 1, 2023,
20 Plaintiff filed a First Amended Complaint. (ROA #32.)

21 On October 4, 2022, Plaintiff Barnett commenced another action in the same
22 court under case number 37-2022-00039614-CU-OE-CTL. (ROA #1.) His complaint
23 alleged individual and class claims for willful violations of the FCRA by Defendants
24 in connection with its procurement and use of consumer reports procured on its
25 employees. Originally, the case was pending before the Honorable Ronald F. Frazier
26 in Department 65, but this Court, on October 19, 2022, granted Plaintiffs' *Ex Parte*
27 Application and reassigned this case to this Court per Local Rule 2.1.3.1. On
28 November 28, 2022, Defendants filed a demurrer. (ROA #17.) On May 1, 2023,

1 Plaintiffs filed an amended complaint instead of opposing the demurrer. (ROA #21.)

2 The Parties, after considerable debate, decided to attend an all-day private
3 mediation in an attempt to come to an early resolution of this matter. The Parties
4 thereafter engaged in meaningful, informal discovery pursuant to the mediation
5 privilege and had multiple discussions over a 12-month period regarding the merits of
6 Plaintiffs' claims and the underlying facts, as well as Defendants' potential defenses.
7 As part of their exchange of information prior to mediation under the mediation
8 privilege, Defendants provided information concerning the FCRA disclosure forms
9 Defendants used; Defendants' employee handbooks; a sizable sampling of Class
10 Members' payroll information, timesheets, and similar records; records concerning
11 Defendants' hiring practices including, the type of correspondence Defendants sent to
12 Plaintiffs and Class Members regarding the background check process; the number of
13 individuals in the putative Class; and the number of workweeks putative Class
14 Members worked and how many consumer reports the Defendants procured, among
15 other things. This information was critical for Plaintiffs' analysis of liability and
16 damages. (Rutledge Decl., ¶¶ 25-29.)

17 On May 23, 2023, the Parties participated in an all-day private mediation
18 before Mr. Mark Rudy, Esquire, a highly sought and reputable private mediator based
19 out of San Francisco. Before the mediation, the parties submitted detailed briefs
20 outlining their respective positions. At the conclusion of the mediation, the parties
21 entered into a Memorandum of Agreement that all Parties signed on May 24, 2023.
22 By August 30, 2023, all Parties likewise signed a long-form Class Action and PAGA
23 Settlement Agreement. (Rutledge Decl., ¶¶ 30-32 and Ex. 1.)

24 On May 25, 2023, Plaintiffs, subject to a stipulation, filed their Third Amended
25 Complaint (TAC). (ROA #42.) The TAC consolidated the FCRA case (Case No. 37-
26 2022-00039614-CU-OE-CTL) into this case via the stipulation and Court Order.
27 (ROA #39.) This is the operative Complaint.
28

1 **IV. THE SETTLEMENT AGREEMENT.**

2 **A. Overview of The Settlement Terms.**

3 The Parties have agreed to a full and complete Settlement of this matter that
4 provides relief for members of the proposed Settlement Classes and Aggrieved
5 Employees. Defendants vigorously deny and continue to deny generally each and all
6 the claims and contentions alleged in this Action. The Settlement Classes consist of
7 the following two classes:

8 a. The FCRA Class means all persons who are or were
9 applicants and/or employees of QW Insurance Solutions, LLC
10 and/or LendingTree, LLC, anywhere in the United States who
11 completed background check disclosures at any time from May
12 25, 2020, to preliminary approval.

13 b. The Wage and Hour Class means all persons who are
14 employed or were previously employed by QW Insurance
15 Solutions, LLC, LendingTree, LLC, or both, and who worked
16 in California as a non-exempt employee at any time from May
17 25, 2018, to preliminary approval.

18 In addition to these two classes, the Aggrieved Employees are defined as all persons
19 who are employed or were previously employed by QW Insurance Solutions, LLC,
20 LendingTree, LLC, or both, and who worked in California as a non-exempt employee
21 at any time from May 25, 2021, to preliminary approval. (Rutledge Decl., Ex. 1, ¶ 1.5,
22 1.19, 1.54, 1.57.)

23 In consideration for the release of the FCRA Class Members' claims, the Wage
24 and Hour Class Members' claims, and the Aggrieved Employees' claims, Defendants
25 will pay the gross sum of \$450,000 into a Gross Settlement Fund for the benefit of the
26 FCRA Class, the Wage and Hour Class, and the Aggrieved Employees. (Rutledge
27 Decl., Ex. 1, ¶ 1.27.) Under no circumstances will any portion of this fund revert to
28 the Defendants. The Gross Settlement Fund shall increase or decrease proportionately
if the number of individuals exceeds or falls below the Defendants' estimates by ten

1 percent or more as defined in the Agreement. (*Id.*, ¶ 9.1.) After Court-approved
2 deductions for the named Plaintiff's Class Representative Enhancement Payment and
3 General Release Payment, attorneys' fees, expenses, an Administrative Expense
4 Payment, and the PAGA Award, which includes a payment to the Labor Workforce
5 Development Agency (LWDA) and the Aggrieved Employees, the remaining funds
6 will be automatically distributed *pro rata* to all qualifying FCRA and Wage and Hour
7 Class Members who do not timely and validly exclude themselves from the Class.
8 Should any funds remain after the close of the check negotiation period, those
9 residual funds shall be distributed consistent with California Code of Civil Procedure
10 § 384 to California Controller's Unclaimed Property Fund. (*Id.*, ¶ 4.3.5.) The Parties
11 have selected Phoenix Settlement Administrators, an experienced and independent
12 third party, as the Settlement Administrator. (*Id.*, ¶ 8.3.)

13 **B. Fairness of Allocation.**

14 The Settlement Agreement provides that allocation of the Net Settlement Fund
15 shall be distributed as follows: 10% of the Net Settlement Fund will be allocated
16 equally among the Participating FCRA Class Members, 90% of the Net Settlement
17 Fund will be allocated to the Participating Wage and Hour Class Members on a pro-
18 rata basis per workweek during the Wage and Hour Class Period, and \$5,000 of the
19 PAGA Award (i.e., 25% of \$20,000) will be allocated to the Aggrieved Employees as
20 individual PAGA Payments on a pro rata, payroll period basis during the PAGA
21 Period. (Rutledge Decl., Ex. 1, ¶ 1.5, 1.19, 1.54, 1.57.)

22 The 10% allocation to the FCRA Class is based on the low damage provisions
23 of the FCRA, which generally provides only \$100 to \$1,000 per negatively affected
24 person unless class members can prove actual damages (something very difficult to
25 prove in FCRA cases). The lower allocation to the FCRA Class is also attributed to
26 the recent case law on this subject that requires plaintiff-consumers to prove concrete
27 harm. *See Limon v. Circle K Stores Inc.*, 84 Cal. App. 5th 671 (2022). These concerns
28 were accounted for at the outset of the settlement negotiations and provide fair and

1 reasonable respective allocations to FCRA Class Members. (Rutledge Decl., ¶¶ 33-
2 37.)

3 **C. Form of Notices.**

4 FCRA Class Members, Wage and Hour Class Members and Aggrieved
5 Employees will receive one or both versions of the Notice of Class Action Settlement
6 (the “Notice”) depending upon which class they are a member of and whether they
7 are an Aggrieved Employee, copies of which are attached as **Exhibits A and B** to
8 **Exhibit 1** of the Declaration of Thomas D. Rutledge filed concurrently with these
9 papers. Before mailing the Notice, the Settlement Administrator shall update all Class
10 Member and Aggrieved Employee addresses using the National Change of Address
11 System. The Notice informs Class Members and Aggrieved Employees of
12 information about the Settlement, including the monetary terms, the nature of the
13 claims and the release, and FCRA Class Members’ and Wage and Hour Class
14 Members’ right to object to or opt-out of the Settlement. Aggrieved Employees have
15 no right to opt out of the Settlement. The Notice will further inform Class Members
16 and Aggrieved Employees how to obtain additional information about the Settlement.
17 In the event a Notice is returned to the Settlement Administrator, the Settlement
18 Administrator will attempt to locate another address for the Class Member or
19 Aggrieved Employee. (Rutledge Decl., Ex. 1, Exs. A and B.)

20 The proposed Notice meets the requirements of Cal. Rules of Court, rule
21 3.766(d) because it “fairly apprise[s] the prospective members of the class of the
22 terms of the proposed settlement and of the options that are open to them in
23 connection with the proceedings.” *7-Eleven Owners for Fair Franchising v.*
24 *Southland Corp.*, 85 Cal. App. 4th 1135, 1159 (2000). Plaintiffs very respectfully
25 request that the Court approve the Notice.

26 **D. Opt-Outs and Objections.**

27 The Notice will inform all FCRA Class Members and Wage and Hour Class
28 Members of their right to opt-out of or object to the Settlement, as well as the

1 associated procedures and deadlines. Class Members who opt-out must send the
2 Settlement Administrator, in a timely manner, written notice indicating their desire to
3 opt-out. The opt-out request must contain the person's name, address, telephone
4 number, and last four digits of their social security number. To object, a Class
5 Member must serve the Settlement Administrator with a timely written statement
6 stating the reason for objecting within 45 days of the mailing of the Notice. The
7 objection must be in writing, include the case name and number, and the grounds for
8 the objection. The Settlement Administrator will serve copies of any objections on
9 counsel, who shall file them with the Court. (Rutledge Decl., Ex. 1, Exs. A and B.)
10 Aggrieved Employees may not opt of, and have no right to opt out of, the Settlement.

11 **E. Attorneys' Fees, Costs, and the Named Plaintiff's Enhancement**
12 **Payment.**

13 The Settlement Agreement contemplates Plaintiffs' Counsel moving the Court
14 for attorneys' fees in an amount not to exceed 33.33% of the Gross Settlement Fund
15 and reasonable litigation costs not to exceed \$20,000. Plaintiffs' Counsel will also
16 move the Court for a Class Representative Enhancement Payment in the amount of
17 \$10,000 to the Named Plaintiff as a reward for his work as the Class Representative.
18 The Settlement Agreement also provides the Named Plaintiff with \$15,000 in a
19 General Release Payment as additional compensation for his personal claims in
20 exchange for a Civil Code § 1542 release. These amounts along with settlement
21 administration costs will be deducted from the Gross Settlement Fund before
22 distribution to Class Members. (Rutledge Decl., Ex. 1, ¶ 3B.)

23 **F. Estimated Allocation of The Gross Settlement Fund.**

24 The Parties estimate the Gross Settlement Fund will be allocated as follows:

Gross Settlement	\$450,000
Litigation Costs	(\$20,000)
Fees (33%)	(\$148,500)

Class Representative Enhancement Award to Named Plaintiff	(\$10,000)
General Release Payment to Named Plaintiff	(\$15,000)
Est. Claims Administrator Costs	(\$12,000)
Subtotal	(\$244,500)
Net Settlement Amount	\$244,500
PAGA Award	\$20,000 ²
FCRA Class	\$22,450
Wage and Hour Class	\$202,050
Residuary	\$0

V. STANDARD OF REVIEW.

“Public policy generally favors the compromise of complex class action litigation.” *In re Cell Phone Termination Fee Cases*, 193 Cal. App. 4th 298 (2009). At the preliminary approval stage, the Court need only determine whether the proposed Settlement is within the range of reasonableness, and thus whether notice to the class of the settlement terms and conditions and the scheduling of a formal fairness hearing are worthwhile. *See* Cal. Rules of Court, rule 3.769(c); Newberg on Class Actions § 13:13 (6th ed. 2023) (“[C]ourts will grant preliminary approval where the proposed settlement is neither illegal nor collusive and is within the range of possible approval.”). In this context, courts generally do not address whether the settlement is ideal or the best outcome, but only whether the settlement is fair, adequate, free from collusion and consistent with plaintiff’s fiduciary obligations to the class. *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116 (2008).

A. The Settlement Terms Are Fair, Reasonable, and Adequate.

“In determining whether a class settlement is fair, adequate and reasonable, the trial court should consider relevant factors, such as the strength of Plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the risk of

² \$15,000 of which will be distributed to the LWDA and \$5,000 of which will be distributed to the Aggrieved Employees.

1 maintaining class action status through trial, the amount offered in settlement, the
2 extent of discovery completed and the stage of the proceedings, the experience and
3 views of counsel, the presence of a governmental participant, and the reaction of the
4 class members to the proposed settlement.” *Wershba v. Apple Computers, Inc.*, 91
5 Cal. App. 4th 224, 233 (2001). A presumption of fairness exists where the settlement
6 is reached through arms-length bargaining. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th
7 1794 (1996).

8 **1. The Settlement Was Reached After Negotiations with Counsel.**

9 The Settlement was reached only after extensive arm’s-length settlement
10 negotiations that took place over a period of months. During the Parties’ settlement
11 discussions, the Parties explored all aspects of this litigation, including Defendants’
12 defenses to liability and class certification. Additionally, attorneys’ fees and a service
13 payment for the Plaintiffs were not discussed until all other material settlement terms
14 had been agreed upon, eliminating the possibility of a trade-off between
15 compensation for the Class and compensation for Plaintiffs’ Counsel or the Plaintiff.
16 Defendants vigorously deny and continue to deny generally each and all the claims
17 and contentions alleged in this Action. (Rutledge Decl., ¶¶ 25-36.) This Settlement is,
18 therefore, entitled to a presumption of fairness. *See Dunk*, 48 Cal. App. at 1802.

19 **2. The Amount of the Settlement Is Significant.**

20 Defendants agree to pay \$450,000. On a net per-person basis and depending on
21 where they fall under the Class definition, the Settlement will provide FCRA Class
22 Members with \$22 per person and if they are in the Wage and Hour Class, some may
23 recover more than \$3,500 on the high side depending on the number of workweeks
24 they were employed during the Class Period. This Class recovery is *well* within the
25 range of reasonable. For a full discussion of Plaintiffs’ Counsel’s reasoning consistent
26 with the *Kullar* analysis, please review Rutledge Decl., ¶¶ 34-72.

1 **3. The Risk of Litigation and Maintaining Class Status Support**
2 **Settlement.**

3 The impressive nature of this recovery comes into even sharper focus when
4 considering the risks of further litigation. Plaintiffs had yet to certify a class. Further,
5 Plaintiffs believes it is highly likely that, had this litigation proceeded, Defendants
6 would move for summary judgment on many grounds, such as the Plaintiffs could not
7 prove their FCRA claims because they did not suffer actual damages as required
8 under *Limon*. Moreover, Plaintiffs believe Defendants would have argued the meal
9 and rest break claims would require too many individualized inquiries and that
10 Plaintiffs' PAGA case was unmanageable, among many other defenses. Defendants
11 likewise contested the viability of Plaintiffs' reimbursement claims related to cell
12 phone usage, arguing its employees' work use of phones, if any, was substantially less
13 than Class Members' personal usage and, therefore, Defendants maintain they are not
14 liable for Class Members' personal use of their cell phones. These and many other
15 defenses Defendants raised and continue to assert played a large part in the settlement
16 amount. (Rutledge Decl. ¶¶ 34-72.)

17 **4. The Discovery Obtained and Stage of Proceedings Supports**
18 **Settlement.**

19 Plaintiffs actively litigated this action. Among other things, the Parties
20 exchanged documents in anticipation of mediation, and Defendants provided the
21 Class Members' and Aggrieved Employees payroll information that Plaintiffs needed
22 to measure damages and assess liability. The Parties went into the settlement
23 conference with a good understanding of the critical issues and the relevant evidence.
24 (Rutledge Decl., ¶¶ 25-30.) This factor also supports approval of the Settlement.

25 **5. The Views and Experience of Counsel Support Settlement.**

26 The Parties are represented by attorneys who have significant experience in
27 class action litigation and settlements. It is the view of Plaintiffs' Counsel that the
28 Settlement is fair, adequate, and reasonable. (Rutledge Decl., ¶¶ 3-24.) Courts

1 typically defer to the judgment of Class Counsel. *See Kullar, supra*, 168 Cal. App. at
2 129 (“The court . . . should give considerable weight to the competency and integrity
3 of counsel . . . in assuring itself that a settlement agreement represents an arm’s-
4 length transaction entered without self-dealing or other potential misconduct.”).

5 **B. Certification of the Settlement Class Is Appropriate.**

6 Plaintiffs respectfully request the Court to certify the FCRA Class and Wage
7 and Hour Class solely for settlement purposes under Code Civ. P. § 382, which
8 authorizes a class action where “[t]he question is one of a common or general interest,
9 of many persons, or when the Parties are numerous, and it is impracticable to bring
10 them all before the court.” To obtain certification, a party must “establish the
11 existence of both an ascertainable class and a well-defined community of interest
12 among the class members.” *Lockheed Martin Corp. v. Superior Court*, 29 Cal. 4th
13 1096, 1103-1104 (2003). “The community of interest requirement embodies three
14 factors: (1) predominant common questions of law or fact; (2) class representatives
15 with claims or defenses typical of the class; and (3) class representatives who can
16 adequately represent the class.” *Richmond v. Dart Indus., Inc.*, 29 Cal. 3d 462, 470
17 (1981).

18 **1. The Proposed Class Is Ascertainable and Numerous.**

19 “No set number is required as a matter of law for the maintenance of a class
20 action” and classes of as few as 28 members have been certified. *Rose v. City of*
21 *Hayward*, 126 Cal. App. 3d 926, 934 (1981). In this matter, there are more than 1000
22 FCRA Class Members and 53 Wage and Hour Class Members; numerosity is
23 therefore satisfied. (Rutledge Decl., Ex. 1 ¶ 4.) “Class members are ascertainable
24 where they may be readily identified without unreasonable expense or time by
25 reference to official records.” *Aguilar v. Cintas Corp. No.2*, 144 Cal. App. 4th 121,
26 146 (2006). Here, FCRA Class Members and Wage and Hour Class Members are
27 easily identifiable from Defendants’ employment records.
28

1 **2. The Community of Interest Requirements Are Met.**

2 **a. Common Questions Predominate.**

3 “The ultimate question the element of predominance presents is whether the
4 issues which may be jointly tried, when compared with those requiring separate
5 adjudication, are so numerous or substantial that the maintenance of a class action
6 would be advantageous to the judicial process and to the litigants.” *Brinker Rest.*
7 *Corp. v. Superior Court*, 53 Cal. 4th 1004, 1023 (2012). Here, Plaintiffs contend there
8 are class-wide issues that predominate over any individual concerns. First is the
9 question of whether Defendant provided FCRA Class Members with unlawful FCRA
10 disclosures before obtaining their consumer reports. Second, is whether Defendants
11 violated the Labor Code in the manner alleged in the operative complaint as against
12 the Wage and Hour Class Members. Because Defendants are a joint enterprise that
13 Plaintiffs contend followed the same procedures with respect to all FCRA Class
14 Members and Wage and Hour Class Members, Plaintiffs maintain that whether
15 Defendants’ misconduct was unlawful can be determined on a class-wide basis.

16 **b. The Named Plaintiffs’ Claims Are Typical.**

17 Typicality requires the named plaintiff’s interests in the action be significantly
18 similar to those of other class members. *See Richmond, supra*, 29 Cal. 3d at 470. A
19 representative plaintiff’s claims are typical if they (1) arise from the same event that
20 gives rise to the claims of other class members, and (2) are based on the same legal
21 theories. *Miller v. Woods*, 148 Cal. App. 4th 867, 872-73 (1983). When the same
22 underlying conduct affects the named plaintiffs and the putative class, the typicality
23 requirement is met irrespective of varying fact patterns that may underlie individual
24 claims. *Daniels v. Centennial Grp., Inc.*, 16 Cal. App. 4th 467, 473 (1993).

25 In this case, the Named Plaintiff has the same claims as FCRA Class Members
26 and the Wage and Hour Class Members: violation of the FCRA’s disclosure and
27 authorization requirements based upon the same allegedly non-compliant form and
28 Labor Code violations. Claims of this sort are routinely found to be typical. *See*

1 *Richmond, supra*, 29 Cal. 3d at 470.

2 c. **The Class Is Adequately Represented by Plaintiff and**
3 **Counsel.**

4 “Adequacy of representation depends on whether the Plaintiff’s attorney is
5 qualified to conduct the proposed litigation and the Plaintiff’s interests are not
6 antagonistic to the interests of the class.” *McGhee v. Bank of Am.*, 60 Cal. App. 3d
7 445, 450 (1976). Plaintiff has been actively engaged in litigation. Plaintiff provided
8 counsel with relevant documents, stayed abreast of developments and settlement
9 negotiations, and evaluated the Settlement Agreement. Plaintiff put the interests of the
10 FCRA Class and Wage and Hour Class first in making decisions related to litigation
11 and settlement. Plaintiff does not have any conflicts of interest with the putative class.
12 Mr. Rutledge has extensive class action experience representing consumers and
13 employees in a myriad of cases, including FCRA and Labor Code cases. (Rutledge
14 Decl., ¶¶ 3-24.)

15 d. **Class Action Is the Superior Vehicle for Adjudication.**

16 A class action is superior where individual claims are too small to warrant
17 separate actions, and where duplicative or repetitious litigation is avoided through the
18 use of the class device. *Aguilar v. Cintas Corp. No.2*, 144 Cal. App. 4th 121, 146
19 (2006). In a matter such as this, where the claims of all FCRA Class Members and
20 Wage and Hour Class Members are identical and are based on the same common core
21 of facts, but involve a modest amount of damages, it is clear that adjudicating this
22 matter as a class action will achieve economies of time, effort, and expense, and
23 promote uniformity of results.

24 B. **Reasons to Preliminarily Approve the PAGA Settlement Allocation.**

25 Plaintiffs likewise recommend the Court to preliminarily approve the PAGA
26 settlement payment of \$20,000. This number is fair and reasonable because, among
27 other reasons, this is primarily a class settlement concerning workers directly affected
28 by Defendants’ alleged misconduct. Thus, it is more appropriate to allocate more

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1 funds to Wage and Hour Class Members than the State of California. Moreover, there
2 is no evidence that the Labor Commissioner has ever cited Defendants for Labor
3 Code violations or that any former employee has sued the Defendants for same or
4 similar claims asserted in this suit. This probably would have gone a long way for the
5 Defendants in requesting leniency from this Honorable Court since it has wide
6 discretion in awarding PAGA penalties under the Labor Code.

7 **VI. CONCLUSION.**

8 For the foregoing reasons, Plaintiffs very respectfully requests that the Court:
9 (1) preliminarily approve the proposed Settlement, (2) certify the FCRA Class for
10 settlement purposes only, (3) certify the Wage and Hour Class for settlement purposes
11 only (4) appoint the Named Plaintiff as Class Representative, (5) appoint Plaintiffs'
12 counsel as Class Counsel, (6) direct notice to be distributed to the FCRA Class, Wage
13 and Hour Class, and Aggrieved Employees, and (6) schedule a final approval hearing.

14 Respectfully submitted,

15 Dated: December 12, 2023

16 Law Office of
Thomas D. Rutledge

17 By: Thomas D. Rutledge
18 /s/Thomas D. Rutledge
19 Attorneys for Plaintiffs
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PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

I, THOMAS D. RUTLEDGE, the undersigned, am employed in the County of San Diego, State of California; I am over the age of 18 and not a party to the within action; my business address is 16956 Via de Santa Fe, Suite 1847, Rancho Santa Fe, California 92091-4606.

On December 12, 2023, I served the foregoing document(s) described as:

**PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN
SUPPORT OF CLASS ACTION SETTLEMENT**

on the interested parties to this action by placing a copy thereof enclosed in a sealed envelope addressed as follows: **See Attached List.**

☒ **(BY MAIL)** I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence was deposited with the United States Postal Service this same day in the ordinary course of business at our Firm's office address in San Diego, California. Service made pursuant to this paragraph, upon motion of a party served, shall be presumed invalid if the postal cancellation date of postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this affidavit.

☒ **(BY E-MAIL via E-file)** I am readily familiar with the business practice for collection and processing of correspondence for emailing with the Court authorized third-party vendor. This correspondence was sent via email via this third-party vendor pursuant to the vendor's policies and practices.

☐ **(BY OVERNIGHT DELIVERY SERVICE)** I served the foregoing document by Federal Express, an express service carrier which provides overnight delivery, as follows. I placed true copies of the foregoing document in sealed envelopes or packages designated by the express service carrier, addressed to each interested party as set forth above, with fees for overnight delivery paid or provided for.

☐ **(BY PERSONAL SERVICE)** I caused such envelope to be delivered by hand to the offices of the above named addressee(s).

☐ **(BY FACSIMILE)** I caused such documents to be delivered via facsimile to the offices of the addressee(s) at the following facsimile number:

Executed December 12, 2023, at San Diego, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

THOMAS D. RUTLEDGE
/s/THOMAS D. RUTLEDGE

Thomas D. Rutledge
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16956 Via de Santa Fe, Suite 1847
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