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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
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14 MARIA CHONA RODRIGUEZ, an
15 individual, on behalf of herself, and on
16 behalf of all persons similarly situated,

17 Plaintiff,

18 vs.

19 EL TORO MEDICAL INVESTORS
20 LIMITED PARTNERSHIP, a Limited
21 Partnership; LIFE CARE CENTERS
OF AMERICA, INC., a Corporation;
and DOES 1 through 50, inclusive,

22 Defendants.
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CASE No. **8:16-CV-00059-JLS-KES**

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

Judge: Hon. Josephine L. Staton

Hearing Date: January 22, 2018

Hearing Time: 2:30 p.m.

Action Filed: January 15, 2016

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1 **I. INTRODUCTION**

2 The parties to this Action have reached a settlement. This Court preliminarily
3 approved the settlement by Order dated December 6, 2017. [Doc. No. 87]. The
4 Settlement provides for Defendants El Toro Medical Investors, L.P. and Life Care
5 Centers of America, Inc. ("Defendants") to pay Six Hundred Seventy-Five Thousand
6 Dollars (\$675,000) ("Gross Settlement Amount").¹

7 In accordance with the preliminary approval order, the required notice of the
8 proposed settlement was disseminated to the class of 2,501 members. The result was that
9 there were no objections and only three opt outs, which means that nearly the entire
10 Class will be participating in the Settlement.² (Decl. Blumenthal, ¶ 4.) The entire the
11 Net Settlement Amount will be distributed to the Participating Class Members. (See
12 Agreement at ¶ III(C)(2).)

13 The purpose of this Final Approval Hearing is to determine whether the proposed
14 settlement of the litigation should be finally approved and for approval of the award of
15 attorneys' fees and costs to be paid Class Counsel and the Plaintiff's service award.
16 Plaintiff Maria Rodriguez ("Plaintiff") respectfully submits this Memorandum in support
17 of final approval and the proposed entry of the Final Order and Judgment in this class
18 action.³

19 **II. SUMMARY OF THE LITIGATION**

20 On January 15, 2016 Plaintiff filed a Complaint against Defendants in the United
21 States District Court, Central District of California. Plaintiff asserted claims against
22 _____

23 ¹ See Class Action Settlement Agreement ("Agreement") at ¶ III(A), a true and
24 correct copy of which is attached as Exhibit 2 to the Declaration of Norman Blumenthal
25 ("Decl. Blumenthal"), served and filed herewith.

26 ² The details of the notice administration process are set forth in the Declaration of
27 Andy Morrison (the Settlement Administrator) filed with this motion.

28 ³ Plaintiff previously filed the Motion for Award of Attorneys' Fees and Costs
[Doc. No. 90] to be heard at the same hearing as this motion.

1 Defendants for: (1) Violation of the Fair Credit Reporting Act (FCRA) for failure to
2 make proper disclosures (15 U.S.C. § 1681, et seq.); (2) Violation of the Fair Credit
3 Reporting Act for failure to obtain proper authorization (15 U.S.C. § 1681, et seq.); (3)
4 Unfair competition in violation of California Business and Professions Code §17200 et
5 seq.; (4) Failure to pay overtime wages in violation of Cal. Lab. Code §§ 510 & 1198, et
6 seq.; (5) Failure to provide accurate itemized wage statements in violation of California
7 Labor Code § 226; and, (6) Failure to timely provide wages due in violation of California
8 Labor Code §§ 201, 202, and 203. On March 15, 2016, Plaintiff filed a First Amended
9 Complaint adding a claim under the Private Attorneys General Act, Cal. Labor Code §§
10 2698 et seq. ("PAGA"). (Decl. Blumenthal, ¶ 6(a).)

11 Defendants filed a motion for dismiss the Fair Credit Reporting Act claims on
12 August 9, 2016. [Doc. No. 23]. On November 16, 2016, the Court denied Defendants'
13 motion to dismiss these FCRA claims (causes of action numbers 1 and 2). [Doc. No. 50].
14 On January 25, 2017, the Court granted the Parties' stipulation to dismiss Plaintiff's
15 Third, Fourth, Fifth, Sixth and Seventh causes of action. As a result, only the FCRA
16 claims remained in the Action. On January 31, 2017, Defendants filed an Answer to the
17 First Amended Complaint, which denied Plaintiff's claims and allegations in their
18 entirety and alleged nineteen affirmative defenses. (Decl. Blumenthal, ¶ 6(b).)

19 In the Action currently, Plaintiff's First Amended Complaint only alleges two
20 claims based upon alleged violations of the FCRA. This is because Plaintiff's wage and
21 hour claims against Defendants as alleged in the Third, Fourth, Fifth, Sixth and Seventh
22 causes of action of the First Amended Complaint and all allegations related thereto have
23 been dismissed in their entirety. Defendants vigorously deny and continue to deny all
24 of the material allegations asserted in the Action, and denies that it has violated any law
25 or other obligation to the Plaintiff or the Class. (Decl. Blumenthal, ¶ 6(c).)

26 During the course of litigation, the Parties each performed analysis of the merits
27 and value of the claims. Prior to settlement discussions, Defendants produced
28

1 information and documentation concerning its policies and the composition of the Class.
2 The parties agreed to negotiate a settlement in an attempt for early resolution of the
3 Action. (Decl. Blumenthal, ¶ 6(d).)

4 Plaintiff and Defendants have engaged in investigation in connection with the
5 Action, including the informal exchange of information regarding the number of possible
6 class members, Defendants' background check release, and other relevant issues. Class
7 Counsel has thoroughly analyzed the value of the Class Members' claims during the
8 prosecution of these Action. This discovery, investigation, and prosecution has included,
9 among other things, (a) multiple meetings and conferences with Plaintiff; (b) inspection
10 and analysis of the documents and materials produced by Plaintiff and Defendants; (c)
11 analysis of the various legal positions taken and defenses raised by Defendants; (d)
12 investigation and law and motion regarding the claims; (e) analysis of potential
13 class-wide recovery; (f) research of the applicable law with respect to the claims asserted
14 in the Action and the potential defenses thereto; (g) the exchange of information through
15 informal discovery; and, (h) assembling data for calculating damages/penalties. The
16 investigation conducted in this matter, as well as discussions between counsel, have been
17 more than sufficient to give the Plaintiff and Class Counsel a sound understanding of the
18 merits of their positions and to evaluate the worth of the claims of the Class Members
19 in light of the defenses to them. Plaintiff and Class Counsel believes that the settlement
20 with Defendants for the consideration and on the terms set forth in the Agreement is fair,
21 reasonable, and adequate and is in the best interest of the Class in light of all known facts
22 and circumstances, including the risk of significant delay, the likelihood that Defendants
23 would prevail on its defenses, and numerous potential appellate issues. (Decl.
24 Blumenthal, ¶ 6(e).)

25 Defendants do not admit any liability and denies and wrongdoing and denied that
26 the Class Members are entitled to any recovery. Defendants deny any and all allegations
27 relating to this matter, including, amount other things, that it has violated the FCRA, or
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1 that it otherwise violated its legal obligations. Defendants have asserted several
2 affirmative defenses, including the lack of standing under *Spokeo v. Robins*, 136 S. Ct.
3 1540 (2016), and that the claims were based on individualized facts and were not
4 appropriate for class certification. Defendants maintain that they have acted lawfully at
5 all times. (Decl. Blumenthal, ¶ 6(f).)

6 On May 16, 2017, the Parties participated in a good-faith, arms-length mediation
7 presided over by David A. Rotman, Esq., a prominent and experienced mediator of class
8 actions. Mediator Rotman assisted the parties in their negotiations and was ultimately
9 able to facilitate a settlement pursuant to the terms and conditions of a mediator's
10 proposal. The principal terms of which were memorialized by the Parties in a signed
11 Memorandum of Understanding executed on executed on May 19 and May 22, 2017.
12 Based on those negotiations and additional arms-length settlement discussions between
13 the Parties, the Parties agreed to settle the Action on the terms and conditions set forth
14 in the Agreement. The Court granted preliminary approval of the Agreement by Order
15 dated December 6, 2017 [Doc. No. 87].) (Decl. Blumenthal, ¶ 6(g).)

16 The Class consists of “all individuals who applied for employment with any
17 Released Party (defined below) in the United States who executed a background check
18 disclosure and/or authorization form that included a liability release clause and whose
19 background check report was procured pursuant to such form at any time between
20 January 15, 2014 and the date of preliminary approval ("Class Period").” (Agreement
21 at ¶ I(B).)

22 Class Counsel has conducted a thorough investigation into the facts of the class
23 action, including a review of relevant documents and data and a diligent investigation
24 of the Class Members’ claims against Defendants. Class Counsel also prepared a class-
25 wide valuation based upon the class information and the FCRA. Based on the foregoing
26 documents and data, and their own independent investigation and evaluation, Class
27 Counsel is of the opinion that the settlement with Defendants for the consideration and
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1 on the terms set forth in the Agreement is fair, reasonable, and adequate in light of all
2 known facts and circumstances, including the risk of significant delay, defenses asserted
3 by Defendants, and numerous potential appellate issues. The parties and their counsel
4 recognize that, in the absence of an approved settlement, they would face a protracted
5 litigation course, a contested motion for certification, motions for summary judgment,
6 and trial and appellate proceedings that would consume time and resources and present
7 each of them with ongoing litigation risks and uncertainties. (Decl. Blumenthal at ¶
8 7(a).)

9 Settlement negotiations took place between experienced counsel. The May 16,
10 2017 mediation session before David Rotman, Esq., was contentious and arm's length.
11 As a result of this mediation process, the parties were ultimately able to reach a
12 settlement pursuant to a mediator's proposal. The Parties, after formal mediation and
13 settlement, reached this agreement based upon the experience of counsel and the
14 uncertainties of protracted litigation. Plaintiff and Class Counsel believe that this
15 settlement is fair, reasonable and adequate. (Decl. Blumenthal at ¶ 7(b).)

16 After the settlement negotiations, the specific terms of the Agreement required
17 additional negotiation before the final written agreement could be signed. Even after the
18 parties reached an agreement as to the basic terms, Class Counsel had to ensure that the
19 terms of the final settlement agreement were fair to every member of the class and
20 retained the requisite opportunities for notice, exclusion, and objection in accordance
21 with class action law. The Settlement reached represents a compromise and settlement
22 of highly disputed claims. (Decl. Blumenthal ¶ 7(c).)

23 By October 2017, the settlement was finalized and executed. Class Counsel filed
24 the preliminary motion requesting Court approval of the settlement. [Doc. No. 80]. By
25 order dated December 6, 2017, this Court granted preliminary approval of the settlement.
26 [Doc. No. 87.] Notice of the settlement providing class members with notice and an
27 opportunity to obtain monetary relief, to opt out, or to object was then mailed by the
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1 Claim Administrator to the Class members on or about December 28, 2017 to the 2,501
2 individuals who comprise the Class. (Decl. Blumenthal at ¶ 7(d).)

3 Importantly, the fairness of this settlement is evidenced by the overwhelmingly
4 positive response of the Class. As will be detailed in the Declaration of the Settlement
5 Administrator, there were no objections and three opt outs, such that nearly the entire
6 Class will be participating in the Settlement and will be mailed a check for their
7 Settlement Share. The absence of any objections evidences the very favorable reception
8 of the class to this Settlement. (Decl. Blumenthal at ¶ 7(e).)

9 **III. THE SETTLEMENT BEFORE THE COURT**

10 To implement the terms of this Settlement, Defendants agree to pay the Gross
11 Settlement Amount of Six Hundred Seventy-Five Thousand Dollars (\$675,000). This
12 amount is the maximum settlement sum and is all-inclusive of all payments contemplated
13 in final resolution of the remaining first and second causes of action in this Action.
14 (Agreement at ¶ III(A).) This Gross Settlement Amount shall be an all-in payment with
15 no reversion to Defendants. (Id.) The Gross Settlement Amount will be used to fund:
16 (i) the Settlement Shares; (ii) any award of attorneys' fees and costs to Class Counsel or
17 otherwise; (iii) the Class Representative Service Payment; and, (iv) the fees and expenses
18 of the Settlement Administrator. After deduction of items (ii)-(iv), the remaining funds
19 will constitute the Net Settlement Amount to be distributed as the Settlement Shares to
20 Participating Class Members. (Agreement at ¶ III(C).) (Decl. Blumenthal at ¶ 3(a).)

21 As per Paragraph III(C) of the Agreement, a participatory Class Members' share
22 will be calculated by dividing the Net Settlement Amount by the total number of
23 Participating Class Members on an equal pro rata basis, but in no event may the
24 individual settlement payment exceed \$1,000 for each Participating Class Member. The
25 excess amount, if any, shall be distributed as a cy pres distribution. (Agreement at ¶
26 III(C)(2).) (Decl. Blumenthal, ¶ 3(b).)

27 Defendants shall fund the Gross Settlement Amount within 14 days after the
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1 Effective Date of the Settlement by wire transfer and as agreed upon with the Settlement
2 Administrator. (Agreement at ¶ III(E)(9).) Within thirty (30) business days after
3 Defendants fund the Gross Settlement Amount, the Settlement Administrator will pay
4 to Participating Class Members their Settlement Shares; to Plaintiff her Class
5 Representative Service Payment; and to Class Counsel the Class Counsel Fees Payment
6 and the Class Counsel Litigation Expenses Payment. (Id.) Settlement checks issued to
7 the Participating Class Members shall remain valid for one-hundred and eighty (180)
8 calendar days from the date of issue. If any Participating Class Members do not cash
9 their settlement payment check before the void date, the funds from such uncashed
10 checks will be paid to the DLSE Unpaid Wage Fund in the name of the Participating
11 Class Member. (Agreement at ¶ III(E)(12).) (Decl. Blumenthal at ¶ 3(c).)

12 KCC Class Action Services (formerly Gilardi & Co.) was appointed as Settlement
13 Administrator. All administrative fees, costs and expenses incurred by the Settlement
14 Administrator in connection with administering the Settlement will be deducted from the
15 Gross Settlement Amount in an amount not to exceed \$25,000. (Agreement at ¶¶
16 III(B)(3) and III(D).) The Declaration of the Andy Morrison (Settlement Administrator)
17 at ¶10, submitted herewith, documents that the costs incurred are \$22,450. (Decl.
18 Blumenthal, ¶ 3(d).)

19 Class Counsel have applied to the Court for an award of an amount up to 1/3 of
20 the Gross Settlement Amount for reasonable attorneys' fees, and for reimbursement of
21 litigation costs not to exceed \$20,000. (Agreement at ¶ III(B)(2).) Plaintiff has also
22 applied for approval of Class Representative Service Payments in an amount not to
23 exceed \$10,000. (Agreement at ¶ III(B)(1).) [Doc. No. 90]. This motion is scheduled
24 for determination at the Final Approval Hearing and was filed during the pendency of
25 the objection period. (Decl. Blumenthal ¶ 3(e).)

26 The scope of the release by all Participating Class Members (all Class Members
27 other than those who elect not to participate in the Settlement) tracks the scope of
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1 Plaintiff's allegations:

2 any and all claims, charges, causes of action, debts, liabilities, demands,
3 obligations, guarantees, costs, expenses, attorneys' fees, penalties, interest,
4 damages (including but not limited to actual damages, statutory damages,
5 and punitive damages), restitution, injunctive relief, declaratory relief and
6 remedies of any other type during the Class Period through the date of
7 Preliminary Approval that were or could have been asserted in this Action
8 based on any facts, conduct, circumstances, transactions, events, policies,
9 procedures, occurrences, acts, disclosures, statements, omissions or failures
10 to act that are pled or that arise out of or are related to the facts, conduct,
11 circumstances, transactions, events, policies, procedures, occurrences, acts,
12 disclosures, statements, omissions or failures to act, which are asserted or
13 which could have been asserted in the First and Second causes of action of
14 the Complaint and First Amended Complaint, including any and all claims
15 that Plaintiff and the Participating Class Members have arising out of or
16 relating directly or indirectly in any manner whatsoever to the facts alleged
17 or which could have been alleged or asserted in the Complaint and First
18 Amended Complaint relating to the First and Second causes of action,
19 including but not limited to any and all claims under 15 U.S.C. § 1681b(b)
20 of the Fair Credit Reporting Act for actual damages, statutory damages,
21 punitive damages, injunctive relief, declaratory relief and attorneys' fees,
22 and any similar, analogous or tangential state law claims ("Released
23 Claims").

24 (Agreement at ¶ III(F)(1).) (Blumenthal ¶ 3(f).)

25 The Settlement in this case represents a substantial benefit for the Class. In
26 advance of negotiations, Class Counsel received class information, which permitted
27 Class Counsel to make an intelligent evaluation. For the individuals whose claims are
28 at issue in these Action, Class Counsel reviewed the data and used information provided
by Defendants to determine the potential value of the claim for purposes of settlement.
Plaintiff calculated the alleged maximum damages that could be recovered if she
prevailed. The FCRA provides for statutory damages of \$100 to \$1,000 per willful
violation. 15 U.S.C. § 1681n. Using the class data, based upon the allegations of the
FCRA claims, Plaintiff calculated that at \$100 to \$1,000 per violation under FCRA for
the 2,503 unlawful forms Defendants used the range of exposure is \$250,000 to \$2.5
million. The settlement of \$675,000, before deductions, represents far more than the
bottom of the range and 27% of the maximum damages for the Class, assuming these
amounts could be proven in full at trial. This settlement amount is fair and reasonable
given the defenses asserted by Defendants. Because the alternative to this Settlement

1 could likely be the Class receiving nothing, Class Counsel accepted the settlement as fair
2 and reasonable. (Decl. Blumenthal at ¶ 8(e).)

3 A comparison of recently approved FCRA settlements involving similar facts
4 further confirms the reasonableness of this settlement. The Court in *Pietras v. Sentry*
5 *Ins. Co.*, 513 F. Supp. 2d 983, 985 (N.D. Ill 2007), cited “cited eighteen cases, which
6 settled for an average of \$ 34.59 per class member.” The settlement in this case far
7 exceeds this range. Similarly, in *Bailes v. Lineage Logistics, LLC*, 2016 U.S. Dist.
8 LEXIS 110943 (D. Kan 2016), the District Court approved a FCRA class settlement
9 which provided for a fund of \$149,205 for a class of 3,430, which correlates to \$43.50
10 per person.⁴ Here, the settlement fund also exceeds the settlement approved in *Bailes*,
11 because the fund is \$675,000 for a class of 2,503, which correlates to \$270 per person.
12 In *Hawkins v. S2Verify*, 2016 U.S. Dist. LEXIS 153576, at *3 (N.D. Cal. 2016), the
13 District Court approved a settlement fund of \$1,090,750.00 for the estimated 4,363 class
14 members, which amounts to approximately \$250 per person. Judge Alsup noted that the
15 *Hawkins* settlement “amount falls within the range of statutory damages that would be
16 available to individual class members under FRCA, i.e., ‘not less than \$100 and not more
17 than \$1,000.’” *Id.* The settlement in this case exceeds the per person amount approved
18 in *Hawkins* and similarly falls within the range of statutory damages. (Decl. Blumenthal
19 at ¶ 8(f).)

20 The settlement is fair, adequate and reasonable to the class and should be finally
21 approved. (Decl. Blumenthal ¶ 3(g).) In sum, this settlement valued at \$675,000 is an
22 excellent result and provides the Class Members with the opportunity to receive a
23 substantial recovery to each individual. This result is particularly remarkable in light of
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25 ⁴ See also *Lengel v. HomeAdvisor, Inc.*, 2017 U.S. Dist. LEXIS 10471, at *22 (D.
26 Kan 2017) (approving FCRA settlement of \$115 per person, and noting that other courts
27 have approved FCRA settlements which were less than \$100 per person). *Singleton v.*
28 *Domino's Pizza, LLC*, 976 F. Supp. 2d 665 (D. Md. 2013) (approving 2.5 million
reversionary settlement for 45,000 people).

1 the fact that liability in this case was far from certain in light of the defenses asserted by
2 Defendant. (Decl. Blumenthal at ¶ 3(g).)

3 **IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS**
4 **COURT TO GRANT FINAL APPROVAL**

5 When a proposed class-wide settlement is reached, it must be submitted to the
6 court for approval. 2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992)
7 at §11.41, p.11-87. Court approval of a class settlement is considered at a final
8 settlement approval hearing, at which evidence and argument concerning the fairness,
9 adequacy, and reasonableness of the settlement may be presented and class members
10 may be heard regarding the settlement. *See Manual for Complex Litigation, Second*
11 *§30.44* (1993). During final approval, the court must determine whether the settlement
12 is fair, reasonable and adequate. *See Officers for Justice v. Civil Service Com'n, etc.*, 688
13 F.2d. 615, 625 (9th Cir. 1982) and Fed. Rules Civ. Proc., rule 23(e).

14 Governing the settlement of class actions, the Federal Rules of Civil Procedure,
15 §23 (e) specifically provides:

16 The court may approve a settlement, voluntary dismissal, or compromise
17 that would bind class members only after a hearing and on finding that the
18 settlement, voluntary dismissal, or compromise is fair, reasonable, and
19 adequate.

20 F.R.C.P. § 23(e)(1)(c).

21 Class action settlements should be approved where (1) the proposed settlement is
22 fairly and honestly negotiated; (2) serious questions of law and fact exist placing the
23 ultimate outcome of the litigation in doubt; (3) the value of an immediate recovery
24 outweighs the mere possibility of future relief after protracted and expensive litigation;
25 and (4) the parties have determined that the settlement is fair and reasonable. *Jones v.*
26 *Nuclear Pharmacy, Inc.*, 741 F.2d 322, 324 (5th Cir. 1984); *Marcus v. State of Kansas*,
27 209 F. Supp. 2d 1179 (D.Kan. 2002); *Lopez v. City of Santa Fe*, 206 F.R.D. 285, 288
28 (D.N.M. 2002). Each of those four criteria is satisfied here.

As set forth herein, this Settlement was reached through arm's-length negotiations.

1 The Settlement was negotiated by experienced counsel for the Class and represented by
2 adequate class representatives, who protected the interests of the Class Members. There
3 were complex legal and factual issues that placed the ultimate outcome of this litigation
4 in doubt. Accordingly, the immediate value of the settlement to the Class Members far
5 outweighs the possibility of relief if this protracted and expensive litigation had
6 continued through trial and appeal. Finally, the considered judgment of all parties is that
7 the Settlement is fair and reasonable in light of the immediate benefit provided by the
8 Settlement to the Class Members, which is a conclusion that is reinforced by the
9 overwhelming response of the Class Members participating in the Settlement.

10 Settlements of disputed claims are favored by the courts. *Waits v. Weller*, 653
11 F.2d 1288, 1291 (9th Cir 1981) (“settlement encouraged in appropriate class action
12 settlements”). In evaluating settlements, the courts have long recognized that
13 compromise is particularly appropriate since such litigation is difficult and notoriously
14 uncertain. Settlement is especially favored in class actions because it minimizes the
15 litigation expenses of all parties and reduces the strain on judicial resources. *Officers for*
16 *Justice, supra*, 688 F.2d at 625 (“voluntary conciliation and settlement are the preferred
17 means of dispute resolution. This is especially true in complex class action litigation”);
18 *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir.1977) (“Particularly in class action suits,
19 there is an overriding public interest in favor of settlement.”); *In re Dept. Of Energy*
20 *Stripper Well Exemption Litig.*, 653 F.Supp. 108, 115 (D.Kan.1986) (“It is in the
21 interests of the courts and the parties that there should be an end to litigation and the law
22 favors the peaceful settlement of controversies.”)

23 “[T]he court’s intrusion upon what is otherwise a private consensual agreement
24 negotiated between the parties to a lawsuit must be limited to the extent necessary to
25 reach a reasoned judgment that the agreement is not the product of fraud or overreaching
26 by, or collusion between, the negotiating parties, and that the settlement, taken as a
27 whole, is fair, reasonable and adequate to all concerned.” *Officers for Justice, supra*,
28

1 688 F.2d at 625. Under this standard, the court must decide whether the proposed
2 settlement falls within the range of reasonable settlements, taking into account that
3 settlements are compromises between the parties reflecting subjective, unquantifiable
4 judgments concerning the risks and possible outcomes of litigation. *Id.*

5 In cases such as this one, courts have repeatedly emphasized that there is a strong
6 initial presumption that the compromise is fair and reasonable. *In re Heritage Bond*
7 *Litig.*, 2005 U.S. Dist. Lexis 13555, at *11 (C.D. Cal. 2005). Courts are advised not to
8 adjudicate the merits of the action, nor substitute their judgment for that of the parties
9 who negotiated the settlement, nor should they reopen and enter into negotiations with
10 the litigants in the hopes of improving the terms of the settlement. *Id.*, at *11; *Officers*
11 *for Justice*, *supra*, 688 F.2d at 625.

12 The essential evaluation is whether, given the risks of litigation and the range of
13 probable results, the settlement, taken as a whole, is fair, reasonable and adequate to all
14 concerned. *Officers for Justice*, *supra* 688 F.2d at 625; *Hanlon v. Chrysler Corp.*, 150
15 F.3d 1011, 1026 (9th Cir. 1998). Here, the facts and circumstances compel the
16 conclusion that the proposed settlement satisfies that standard.

17 **V. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE**

18 **A. The Test for Fairness**

19 To determine whether a proposed settlement is fair, reasonable, and adequate,
20 courts consider some or all of the following factors: “the strength of the plaintiffs’ case;
21 the risk, expense, complexity, and likely duration of further litigation; the risk of
22 maintaining class action status throughout the trial; the amount offered in settlement; the
23 extent of discovery completed and the stage of the proceedings; the experience and views
24 of counsel; the presence of a governmental participant; and the reaction of the class
25 members to the proposed settlement.” *Hanlon*, 150 F.3d at 1026; *Officers for Justice*,
26 *supra*, 688 F.2d at 625; see also *Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003).

27 The list of factors is not exhaustive and should be tailored to each case. *Officers*
28

1 *for Justice*, at 625. Due regard should be given to what is otherwise a private consensual
2 agreement between the parties. *Id.* The inquiry “must be limited to the extent necessary
3 to reach a reasoned judgment that the agreement is not the product of fraud or
4 overreaching by, or collusion between, the negotiating parties, and that the settlement,
5 taken as a whole, is fair, reasonable and adequate to all concerned.” *Id.*, at 625.
6 “Ultimately, the [trial] court's determination is nothing more than ‘an amalgam of
7 delicate balancing, gross approximations and rough justice.” *Id.*

8 The question whether a proposed settlement is fair, reasonable and adequate
9 necessarily requires a judgment and evaluation by the attorneys for the parties based
10 upon a comparison of “the terms of the compromise with the likely rewards of
11 litigation.” *Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir. 1982), *cert. denied* 464
12 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders of TMT Trailer*
13 *Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)). Therefore, many courts
14 recognize that the opinion of experienced counsel supporting the settlement is entitled
15 to considerable weight. *Kirkorian v. Borelli*, 695 F. Supp. 446, 451 (N.D. Cal. 1988);
16 *Reed v. General Motors Corp.*, 703 F.2d 170, 175 (5th Cir. 1983); *Weinberger*, 698 F.2d
17 at 74; *Armstrong v. Board of School Directors*, 616 F.2d 305, 325 (7th Cir. 1980); *Fisher*
18 *Bros. v. Cambridge-Lee Indus., Inc.*, 630 F. Supp. 482, 489 (E.D. Pa. 1985). For
19 example, in *Lyons v. Marrud, Inc.*, 1972 U.S. Dist. LEXIS 13401, *5 (S.D.N.Y. 1972),
20 the court noted that “[e]xperienced and competent counsel have assessed these problems
21 and the probability of success on the merits. They have concluded that compromise is
22 well-advised and necessary. The parties' decision regarding the respective merits of their
23 position has an important bearing on this case.” *Id.* at *5.

24 **B. The Settlement Satisfies the Test for Fairness**

25 1. The Investigation and Discovery are Sufficient to Allow Counsel 26 and the Court to Act Intelligently

27 The stage of the proceedings at which this settlement was reached weighs in favor
28 of final approval of the settlement. Class Counsel has conducted a thorough

1 investigation into the facts of the class action. Class Counsel began investigating the
2 Class Members' claims before this action was filed. Class Counsel reviewed the
3 necessary class data and documents concerning the alleged claims. The parties engaged
4 in law and motion over the sufficiency of the claims. In advance of negotiations,
5 Defendants provided the information necessary for Class Counsel to intelligently
6 negotiate a settlement. There was no need for continued litigation simply to reaffirm
7 what was already known by the negotiating parties.

8 During the relevant time period, Plaintiff alleges that Defendant used employment
9 application forms which violated FCRA. Plaintiff's First Amended Complaint alleges
10 two claims based upon alleged violations of the FCRA. (Decl. Blumenthal ¶ 5).

11 Defendants opposed Plaintiff's claims, and argued that Defendants complied fully
12 with the law. The factual defenses asserted by Defendants presented serious risks to
13 establishing liability. Plaintiff obtained information concerning the Defendant's
14 practices, as well as necessary data regarding the Class Members. The parties then
15 decided to use the services of a mediator to see if the case could be resolved, and
16 engaged David Rotman for this purpose. (Decl. Blumenthal at ¶ 8(d).)

17 Class Counsel has litigated similar cases against other employers, including claim
18 against other employers concerning FCRA. (Decl. Blumenthal at ¶ 2.) Although
19 Plaintiff and Class Counsel believed that the case had merit, they recognized the
20 potential risks, both sides would face if litigation of this action continued. As the
21 federal court held in *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D.Cal.
22 2007), where the parties faced uncertainties similar to those in this litigation:

23 In light of the above-referenced uncertainty in the law, the risk, expense,
24 complexity, and likely duration of further litigation likewise favors the
25 settlement. Regardless of how this Court might have ruled on the merits of
26 the legal issues, the losing party likely would have appealed, and the
27 parties would have faced the expense and uncertainty of litigating an
28 appeal. "The expense and possible duration of the litigation should be
considered in evaluating the reasonableness of [a] settlement." See *In re
Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458 (9th Cir.
2000). Here, the risk of further litigation is substantial.

1 *Id.* at *12.

2 For the mediation, lengthy mediation briefs were researched and prepared. The
3 parties prepared valuations under possible outcome scenarios. During the mediation
4 negotiations, which were both contentious and arm's-length, Defendants vigorously
5 disputed liability, and the amount of compensation owed to the Class. Moreover,
6 Defendants argued that the class could not be obtained and maintained through trial
7 because ultimately individual issues predominated that would to be separately
8 determined for each Class Member based on their individual experience. While other
9 cases have approved class certification in FCRA claims, class certification in this action
10 would have been hotly disputed. (Decl. Blumenthal at ¶ 7(b).)

11 Based on the complexity of the case, the novelty of the legal issues, the substantial
12 risks and uncertainty of the outcome on both liability and certification issues, as well as
13 the need to establish damages, Plaintiff believes that the Settlement is an excellent one
14 and is fair and in the best interests of the Class Members. There can be no doubt that
15 counsel for both parties possessed sufficient information to make an informed judgment
16 regarding the likelihood of success on the merits and the results that could be obtained
17 through further litigation, given the relative strengths and weaknesses of their positions.
18 (Decl. Blumenthal at ¶ 7(f).)

19 2. The Settlement Was Reached Through Arm's Length Bargaining

20 This settlement was the result of arm's-length negotiations as well as formal and
21 informal settlement conferences between the parties through their respective attorneys.
22 Through informal discovery procedures, Defendants disclosed confidential information
23 relating to their organization, the employment practice, the size of the putative class, and
24 other information for the Class Members. This information permitted Class Counsel to
25 evaluate liability and settlement. After comprehensive legal and factual analysis,
26 including the defenses asserted by Defendants, Class Counsel possessed sufficient
27 information for intelligent evaluation of the case for purposes of settlement. (Decl.
28

1 Blumenthal at ¶7.)

2 Prior to the initiation of settlement discussions, Class Counsel reviewed and
3 outlined the case based upon the provided information, and determined the conditions
4 of settlement which would be fair and reasonable to the Class. Class Counsel was
5 experienced in the types of settlement appropriate to resolve these claims, as Class
6 Counsel has previously litigated and settled other similar actions. Initial informal
7 discussions were productive and encouraged both parties to further analyze their
8 positions and to pursue formal mediation. (Decl. Blumenthal at ¶7.)

9 Following extensive discovery and informal discussions between counsel, the
10 parties agreed to mediation before David Rotman, an experienced mediator for
11 employment class actions. The parties prepared for the mediation by exchanging
12 information, calculating damages, and submitting mediation briefs to Mr. Rotman. After
13 Mr. Rotman's independent review of the facts in this case, the mediator determined the
14 amount that he believed was fair, reasonable, and adequate, and recommended a
15 settlement amount to the parties as the mediator's proposal that was not subject to further
16 negotiation. Counsel for the parties, after contentious negotiations, both agreed to accept
17 the mediator's proposal, which was given great weight by the parties given his expertise
18 as a mediator. As a result of the mediation process, the parties reached a settlement that
19 they believe to be fair and reasonable in light of the experience of the Parties' attorneys
20 as Counsel in other cases, and the uncertainties and cost of the years of litigation the
21 Parties faced if the settlement was not reached. Most importantly, Plaintiff and Class
22 Counsel believe that this settlement is fair, reasonable and adequate. (Decl. Blumenthal
23 at ¶7(b).)

24 By reason of the settlement, Defendant agrees to pay Six Hundred Seventy-Five
25 Thousand Dollars (\$675,000) in consideration for the settlement and the release of the
26 Released Claims as described in the Agreement. All of the Gross Settlement Amount will
27 be disbursed pursuant to the Agreement, and none of it will revert to Defendant.
28

1 (Agreement at ¶ III(A).)

2 After the mediation, the specific terms of the settlement required additional
3 negotiation before the final written agreement could be signed. Class Counsel began the
4 process of reviewing the settlement terms and drafting the Agreement and exhibits. Even
5 after the parties reached an agreement, Class Counsel had to ensure that the terms of the
6 Settlement were fair to every member of the class and contained the requisite
7 opportunities for notice, exclusion, and objection in accordance with California class
8 action law. By October 2017, the settlement was finalized and executed. Class Counsel
9 filed the preliminary motion requesting Court approval of the settlement. [Doc. No. 80].
10 By order dated December 6, 2017, this Court granted preliminary approval of the
11 settlement. [Doc. No. 87.] Notice of the settlement providing class members with notice
12 and an opportunity to obtain monetary relief, to opt out, or to object was then mailed by
13 the Claim Administrator to the Class members on or about December 28, 2017 to the
14 2,501 individuals who comprise the Class. (Decl. Blumenthal at ¶7(d).) Plaintiff and
15 Class Counsel believe that this settlement is fair, reasonable and adequate.

16 3. Counsel is Experienced in Similar Litigation

17 Class Counsel in this matter has extensive class action experience in many fields
18 and has represented thousands of persons nationwide in actions including labor and
19 overtime litigation, employment litigation, constitutional challenges to state and local
20 statutes, collateral protection insurance cases, consumer refund actions and tobacco
21 litigation. Class Counsel has been previously approved as experienced Class Counsel
22 Courts in the Central District, as well as by other state and federal courts throughout
23 California. A list of previous and current class action cases managed and settled by the
24 Class Counsel in this action is provided to the Court by way of the Declaration of
25 Norman Blumenthal. Class Counsel have participated in every aspect of the settlement
26 discussions and have concluded the settlement is fair, adequate and reasonable and in the
27 best interests of the Class. (Decl. Blumenthal at ¶ 2.)
28

1 4. There Are No Objections to the Settlement and Three Opt-Outs

2 After dissemination of the class notice to the 2,501 members of the Class, which
3 provided each class member with the terms of the settlement, not one class member has
4 objected to the settlement and only three class members submitted request for exclusion.
5 (Decl. Blumenthal at ¶4.)

6 The lack of any objections strongly supports the fairness, reasonableness and
7 adequacy of the Settlement. See *In re Austrian & German Bank Holocaust Litigation*,
8 80 F. Supp. 2d 164, 175 (S.D.N.Y. 2000) (“If only a small number of objections are
9 received, that fact can be viewed as indicative of the adequacy of the settlement.”);
10 *Stoetznner v. U.S. Steel Corp.*, 897 F.2d 115, 118-119 (3d. Cir. 1990) (29 objections out
11 of 281 member class 'strongly favors settlement'); *Laskey v. Int'l Union*, 638 F.2d 954
12 (6th Cir. 1981) (The fact that 7 out of 109 class members objected to the proposed
13 settlement should be considered when determining fairness of settlement.)

14 Importantly, every Class Member was given the opportunity to participate in the
15 Settlement under the same terms. Nearly the entire Class elected to participate in the
16 Settlement and will be mailed a check for their Settlement Share. (Decl. Blumenthal at
17 ¶ 7(g).) Here, given the fact that only no Class Member objected and nearly all of Class
18 Members elected to participate in the settlement, the Court can conclude that the
19 settlement is fair, reasonable and adequate.

20 5. The Risk, Expense, Complexity, and Likely Duration of Further
21 Litigation

22 The complexities and duration of further litigation cannot be overstated. Here, a
23 number of defenses asserted by Defendants present serious threats to the claims of
24 Plaintiff and the other Class Members. Here, a number of defenses asserted by
25 Defendants presented serious threats to the claims of Plaintiff and the other Class
26 Members. Defendants contend that their practice complied with all applicable laws.

27 First, in its answer, Defendants denied all of Plaintiff's substantive allegations.
28 Second, statutory damages under the FCRA — ranging from \$100 to \$1,000 — are only

1 available if Plaintiff establishes that Defendants violated the FCRA willfully. 15 U.S.C.
2 § 1681n(a)(1)(A). This could be a significant hurdle under the Supreme Court's opinion
3 in *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 57-59, 127 S. Ct. 2201, 167 L. Ed. 2d
4 1045 (2007), which left open a defense for a defendant's reasonable or even careless
5 construction of a statute. Third, Some district courts have ruled that a disclosure form
6 that contains other information—for instance, a liability waiver—does not violate the
7 FCRA. E.g., *Smith v. Waverly Partners, LLC*, 2012 U.S. Dist. LEXIS 119403, 2012 WL
8 3645324, at *6 (W.D.N.C. Aug. 23, 2012); *Burghy v. Dayton Racquet Club, Inc.*, 695
9 F. Supp. 2d 689, 699 (S.D. Ohio 2010). Finally, the court may find remitter/reduction
10 of the statutory damages appropriate. See e.g. *Klingensmith v. Max & Erma's*
11 *Restaurants, Inc.*, 2007 U.S. Dist. LEXIS 81029, 2007 WL 3118505, at *5 (E.D.Pa.
12 2007). If successful, Defendants' defenses could eliminate or substantially reduce any
13 recovery to the Class. While Plaintiff believes that these defenses could be overcome,
14 Defendants maintain these defenses have merit and therefore present a serious risk to
15 recovery. Moreover, there was also a significant risk that, if the Action was not settled,
16 Plaintiff would be unable to obtain class certification and maintain a certified class
17 through trial, and thereby not recover on behalf of anyone other than themselves.
18 Certifying a class encompassing approximately 2,500 prospective employees presents
19 complex issues that could undermine certification. At the time of the settlement
20 negotiations, Defendants opposed the propriety of class certification, arguing that
21 individual issues precluded class certification. While other cases have approved class
22 certification of FCRA claims, class certification in this action would have been hotly
23 disputed and was by no means a foregone conclusion. (Decl. Blumenthal at ¶ 8(a).)

24 Even if Plaintiff was successful on class certification and at trial, there is little
25 doubt that Defendants would post a bond and appeal in the event of an adverse judgment.
26 A post-judgment appeal by Defendants would have required many more years to resolve,
27 assuming the judgment was affirmed. If the judgment was not affirmed in total, then the
28

1 case could have dragged on for years after the appeal. The benefits of a guaranteed
2 recovery today, of the very remedy that Plaintiff would seek at trial, outweigh an
3 uncertain result years in the future. (Decl. Blumenthal at ¶8(b).)

4 Both Plaintiff and Class Counsel recognize the expense and length of a trial in this
5 action against Defendants through possible appeals which could take at least another
6 three years. Class Counsel also have taken into account the uncertain outcome and risk
7 of litigation, especially in complex actions such as this Action. Class Counsel are also
8 mindful of and recognize the inherent problems of proof under, and alleged defenses to,
9 the claims asserted in the Action. Moreover, post trial motions and appeals would have
10 been inevitable. Costs would have mounted and recovery would have been delayed if
11 not denied, thereby reducing the benefits of an ultimate victory. Plaintiff and Class
12 Counsel believe that the settlement confers substantial benefits upon the Class Members,
13 and have determined that the settlement set forth in the Agreement is in the best interest
14 of the Class. (Decl. Blumenthal at ¶8(c).)

15 Similarly, Defendants have concluded that settlement of this Action is desirable
16 in the manner and upon the terms and conditions set forth in the Agreement in order to
17 avoid the expense, inconvenience, and burden of further legal proceedings, and the
18 uncertainties of trial and appeals.

19 VI. CONCLUSION

20 For the reasons stated herein and in the accompanying declarations, Plaintiff
21 respectfully submits that the proposed settlement satisfies the standard of fairness
22 established by the federal courts and should therefore be finally approved.

23 Dated: June 8, 2018

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOW LLP

25 By: /s/Norman B. Blumenthal
26 Norman B. Blumenthal, Esq.
27 Attorneys for Plaintiff and the Class
28