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11
12 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF CONTRA COSTA**

14 NATHAN COZZITORTO, RENA
15 COZZITORTO, AND MICHAEL
16 COZZITORTO SR., individually and d/b/a/
COZZ'S AUTO BODY & SERVICE INC.; on
17 behalf of themselves and all others similarly
situated;

18 Plaintiffs,

19 vs.

20 AMERICAN AUTOMOBILE ASSOCIATION
OF NORTHERN CALIFORNIA, NEVADA &
21 UTAH, a California nonprofit mutual benefit
corporation, f/k/a CALIFORNIA STATE
22 AUTOMOBILE ASSOCIATION; and DOES 1
through 50.

23 Defendants.

24 AND RELATED CROSS-ACTION.
25
26
27
28

Case No. C13-02656

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' UNOPPOSED MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

Hearing Date: May 9, 2019

Time: 9:00 a.m.

Judge: Hon. Edward G. Weil

Department: 39

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1 **I. INTRODUCTION**

2 Plaintiffs Nathan Cozzitorto, Rena Cozzitorto, Michael Cozzitorto, Sr., and Cozz’s Auto
3 Body & Service, Inc. submit this memorandum in support of their unopposed motion for final
4 approval of the class action settlement set forth in the Settlement Agreement and Release of
5 Claims.¹

6 On December 14, 2018, this Court preliminarily approved the Settlement for both the
7 Contract Station Class and the 17200 Class. Since that time, settlement administration has been
8 executed as ordered. Class members received full notice of the Settlement through e-mail, mail,
9 publication, and the case website. They also received an opportunity to object to the Settlement
10 and to submit claims to participate in the 17200 Class Settlement. To date, the Settlement
11 Administrator has received *over 1,000 claims and zero objections*.

12 As noted by the Court at the preliminary approval hearing, the Settlement is a great result
13 after five years of hard-fought litigation. It achieves cash payments for all eligible Class
14 members and mitigates the risk, length, and expense of trial and appeals. The Settlement
15 provides for a non-reversionary payment by Defendant American Automobile of Northern
16 California, Nevada, and Utah (“AAA NCNU”) of four million three hundred thousand dollars
17 and was reached after extensive arm’s-length negotiations with the assistance of an independent
18 mediator. The Settlement is fair, reasonable, and adequate, and warrants final approval.

19 Plaintiffs request the Court enter an order Granting Final Approval of the Settlement,
20 approve the requested attorneys’ fees, expenses, and service awards², and enter judgment in this
21 case.

22
23
24 ¹ The Settlement is attached as Exhibit 1 to the Declaration of Stephanie D. Biehl in Support of
25 Plaintiffs’ Unopposed Motion for Final Approval of Class Action Settlement (“Biehl Decl.”),
filed concurrently herewith. Except as otherwise noted, all capitalized terms herein have the
same meaning as defined in the Settlement.

26 ² Plaintiffs’ Motion for Attorneys’ Fees, Expenses, and Service Awards was filed in January of
27 2019 — independent of the instant motion. However, some relevant substance of the fee motion
28 is incorporated here, and the requested relief therein is included in the Proposed Order filed
herewith.

1 **II. FACTUAL BACKGROUND³**

2 **A. The Litigation of this Action**

3 This class action has been pending for over five years. During the span of this litigation,
4 the Parties investigated, researched, briefed, and argued hundreds of issues and motions
5 regarding the facts and legal claims in this case. As such, the Parties have a comprehensive
6 understanding of the strengths and risks of all claims and defenses asserted.

7 In general, the case concerns allegations by Plaintiffs that AAA NCNU misclassified
8 individuals who performed its emergency road services and that AAA NCNU breached its
9 contracts with the contract stations that provided AAA emergency road service.

10 **1. The Pleadings**

11 On December 19, 2013, Plaintiffs filed their initial Complaint, asserting class action
12 claims against AAA NCNU on behalf of a putative class of emergency road service providers
13 and asserted causes of action for: 1) violation of California Labor Code section 2802; and 2)
14 violation of California Business and Professions Code section 17200 *et seq.* Biehl Decl. ¶ 3.

15 After AAA NCNU’s consent for an initial amendment and a subsequent round of
16 demurrer briefing, Plaintiffs filed their operative Second Amended Complaint (“SAC”) in May
17 of 2014 against AAA NCNU on behalf of two putative classes: 1) the Independent Contractor
18 Class, defined as “All persons who currently perform, or have performed, emergency road
19 service for AAA NCNU in the State of California and who were misclassified as independent
20 contractors by AAA NCNU”; and 2) the Breach of Contract Class, defined as “All AAA NCNU
21 Contract Stations that were signatories to the Emergency Road Service Contract Station
22 Agreement and that performed emergency road services for AAA NCNU in the State of
23 California under the terms of the Emergency Road Service Contract Station Agreement. Biehl
24 Decl. ¶¶ 4-5.

25
26
27 ³ This section assumes the Court’s general familiarity with this action and is detailed more fully
28 in the Biehl Declaration and the Settlement Agreement (Ex. 1).

1 The SAC alleges various causes of action. Relevant to this motion, it seeks relief for
2 violation of California Business and Professions Code section 17200 *et seq.*, on behalf of
3 Plaintiffs and the Independent Contractor Class. The SAC also seeks damages for breaches of
4 contract on behalf of Cozz's Auto Body & Service Inc. and the Breach of Contract Class. Biehl
5 Decl. ¶ 6. On May 9, 2014, AAA NCNU answered the SAC, denying all allegations and
6 asserting myriad affirmative defenses. *Id.* ¶ 7.

7 On December 1, 2015, AAA NCNU filed its operative Second Amended Answer as well
8 as its operative Second Amended Cross Complaint. Biehl Decl. ¶ 9. The Second Amended
9 Cross Complaint alleges: 1) declaratory relief against Plaintiffs; 2) contractual indemnity against
10 Plaintiffs; 3) equitable indemnity against Cozz's Auto Body & Service Inc.; 4) declaratory relief
11 under Labor Code section 2860 against Nathan Cozzitorto, Rena Cozzitorto and Michael
12 Cozzitorto, Sr.; 5) declaratory relief under Labor Code section 2861 against Nathan Cozzitorto,
13 Rena Cozzitorto and Michael Cozzitorto, Sr.; 6) conversion against Cozz's Auto Body & Service
14 Inc., Rena Cozzitorto and Michael Cozzitorto, Sr.; and 7) violation of Business and Professions
15 Code section 17200 *et seq.* against Plaintiffs. *Id.* Plaintiffs answered the Second Amended
16 Cross Complaint on December 20, 2015. Biehl Decl. ¶ 10.

17 2. Class Certification and Discovery

18 On March 4, 2016, the Parties began an extensive class certification process when
19 Plaintiffs filed their motion for class certification. Biehl Decl. ¶ 11. After full briefing, the
20 Court held the first of two class certification hearings. *Id.* The Court then ordered further
21 briefing on class certification, and the Parties returned for the second certification hearing on
22 September 9, 2016. *Id.* On November 23, 2016, the Court issued its order granting Plaintiffs'
23 class certification motion in full and certified the following classes⁴:

24 The 17200 Class: All persons from December 13, 2009 up to and through the time
25 of judgment (the "Class Period") who performed emergency road service (as a
26 driver, dispatcher, fleet mechanic, administrator, or manager/supervisor) for AAA

27 ⁴ The Court also certified the Owner Subclass (seeking remedy for AAA NCNU's alleged
28 violation of Labor Code section 2802), but this claim was subsequently summarily adjudicated.
See Biehl Decl. ¶ 12.

1 NCNU in the State of California for at least an average of 30 hours per week or
2 more but who were not classified as employees by AAA NCNU.; and

3 The Breach of Contract Class: All contract stations in the State of California which
4 contracted with AAA NCNU to provide emergency road service from December
5 13, 2009 up to and through the time of judgment.

6 Biehl Decl. ¶ 12.

7 Prior to and following class certification, the parties engaged in substantial discovery.
8 Plaintiffs and Class Counsel (i) reviewed over 135,000 documents; (ii) served and responded to
9 1,915 written discovery requests; (iii) prepared for, conducted, and defended over 45 party and
10 non-party depositions; and (vi) retained and consulted with organizational control, employment,
11 benefits, and damages experts regarding the information obtained in discovery. Biehl Decl. ¶ 13.

12 3. Class Certification Notice and Class Membership

13 Between January 2017 and November 2017, Plaintiffs created a comprehensive notice
14 plan, and Class members had a right to opt-out of the classes during the class notice period.
15 Biehl Decl. ¶ 14. The Court held several hearings regarding the notice plan, where the Parties
16 submitted argument regarding the particulars of the plan. *Id.* Part of the notice plan was
17 obtaining contact information for as many potential Class members as possible, so the Court
18 ordered that that contract stations were required to produce contact information for their
19 employees (potential 17200 Class members), and some Contract Stations and their Owners were
20 thereafter excluded from the Classes for failing to do so and for failing to respond to the Court's
21 related order to show cause. Biehl Decl. ¶ 14. On November 20, 2017, the class certification
22 notices were published and distributed. Biehl Decl. ¶ 15. The deadline to opt-out was December
23 20, 2017, and some Class members excluded themselves. *Id.* Also prior to this deadline, some
24 Class members settled with AAA NCNU and released their claims in this case. Biehl Decl. ¶ ____.

25 4. Summary Judgment and Trial Preparation

26 On February 13, 2018, the Court entered an Order concerning the five dispositive
27 motions filed by the Parties. Biehl Decl. ¶ 16. The Court summarily adjudicated AAA NCNU's
28 cross-claims for contractual indemnity and declaratory relief regarding contractual indemnity.

1 Biehl Decl. ¶ 16. The Court denied AAA NCNU’s motion for summary adjudication as to its
2 Second Amended Cross Complaint, and it denied Plaintiffs’ motion for summary adjudication as
3 to AAA NCNU’s Second Amended Answer. Biehl Decl. ¶ 17. The Court granted AAA
4 NCNU’s motion for summary adjudication as to one of three breaches of contract alleged and the
5 Breach of Contract Class’ claim for violation of California Business and Professions Code §
6 17200 but denied the remainder of that motion. Biehl Decl. ¶ 18. Finally, the Court summarily
7 adjudicated the Owner Subclass’s Labor Code § 2802 claim, rendering the Owner Subclass
8 moot. Biehl Decl. ¶ 19.

9 Following summary judgment, some contract stations (Breach of Contract Class
10 members) and some owners of contract stations (17200 Class members) were excluded for
11 failing to provide employee contact information. Biehl Decl. ¶ 20. Other contract stations were
12 excluded from the Breach of Contract Class because their initial contracts with AAA NCNU
13 contained arbitration provisions, and additional Class members were excluded from their
14 respective classes because they settled and released their claims. *Id.*

15 On August 1, 2018, the Court entered an Order adopting the Parties’ Joint Stipulation to
16 Modify Class Definitions, which altered the Class Period for both the 17200 Class and the
17 Breach of Contract Class. Biehl Decl. ¶ 21.

18 **B. Summary of Settlement Negotiations**

19 The Parties initially attempted to resolve this action prior to class certification. Biehl
20 Decl. ¶ 22. Mark S. Rudy, a renowned employment attorney and mediator assisted in this first
21 mediation. *Id.* Prior to meeting with Mr. Rudy, Plaintiffs sent a detailed settlement demand to
22 AAA NCNU, and both parties prepared extensive mediation briefs. *Id.* Following the day with
23 Mr. Rudy and subsequent settlement communications, the Parties were unable to resolve the case
24 before class certification and summary judgment orders were issued. *Id.*

25 Two years later, the Parties engaged in a second mediation before the Hon. Richard
26 Kramer (Ret.). Biehl Decl. ¶ 23. Judge Kramer was formerly the complex division judge in the
27 Superior Court for the State of California, County of San Francisco and has substantial
28 experience presiding over class actions and complicated cases. *Id.* Prior to this mediation, AAA

1 NCNU produced additional documentary evidence relevant to the remaining claims. Biehl Decl.
2 ¶ 23. During the 13-hour mediation, the Parties reached the basic terms of a settlement,
3 negotiated the terms of a binding Memorandum of Understanding, and agreed to prepare the
4 formal Settlement Agreement (Biehl Decl., Ex. 1). *Id.*

5 **III. THE SETTLEMENT, PRELIMINARY APPROVAL, AND SETTLEMENT**
6 **ADMINISTRATION**

7 **A. Monetary Relief for Class Members Pursuant to the Settlement**

8 **1. Overview of Cash Payment and Distribution**

9 The Settlement requires AAA NCNU to pay \$4,300,000. Biehl Decl. ¶ Ex. 1 at p. 9. Part
10 of the payment will be used to pay the settlement administration costs and any fees and expenses
11 approved by the Court. Biehl Decl. ¶ 29, Ex. 1 at p. 11; *see also* Biehl Decl. ¶ 45. The
12 remainder will be distributed to Class members and to *cy pres* recipients. Biehl Decl. ¶ 39-41;
13 Biehl Decl., Ex. 1 at p. 11.

14 As detailed below, distribution to the Breach of Contract Class Members is a pro-rata
15 amount of damage events. Specifically, for each Class Member, AAA NCNU provided to
16 Plaintiffs and the Settlement Administrator the total number of 1T and On-the-Go events (the
17 two remaining damage claims for the Breach of Contract Class) during the Class Period. Biehl
18 Decl. Ex. 1 at 12; *see also* Biehl Decl. ¶ 31. AAA NCNU also provided the total number of 1T
19 events and On-the-Go events during the Class Period for all Breach of Contract Class members
20 eligible to participate in the settlement. *Id.* The amount in dollars of each Class Member's
21 recovery is the number of each Class Member's total events divided by the entire Class' total
22 events, multiplied by the amount recovered for the Breach of Contract Class. Biehl Decl. ¶ 31;
23 Biehl Decl., Ex. 1 at 12. Up to \$1,300,000 will be allocated to the Breach of Contract Class.
24 Biehl Decl. ¶ 33. After 180 days, an uncashed check will escheat to the State of California. *Id.*

25 Each 17200 Class Member's Settlement Share is calculated based on their pro-rata
26 portion of the net settlement amount. This is determined by the number of Weeks Worked by the
27 individual Class Member. Biehl Decl. ¶ 36; *Id.* at Ex. 1 at p. 13. The Settlement presumes that
28 each Class Member for whom contact information was previously obtained worked 20 weeks

1 during the Class Period, and all claiming 17200 Class Members will receive payment for at least
2 that amount. Many Class members worked more than 20 weeks and have, through the online
3 and paper claim forms, further averred under penalty of perjury and provided additional
4 information to that extent. Biehl Decl. ¶ 36. Class members payments are calculated by taking
5 the number of Weeks Worked by the Class member (either 20, or the reported amount) divided
6 by the total Weeks Worked by the 17200 Class and then multiplied by the amount recovered for
7 the 17200 Class. Biehl Decl., Ex. 1 at p. 13; *Id.*, Ex. D.

8 While all presumed Class members for whom the Parties obtained contact information
9 were given notice of the Settlement, not all of these individuals submitted claims. Sternberg
10 Decl. ¶ 25. This was anticipated by the Parties and the Court, so the Parties agreed that the each
11 20-week share not claimed by a Class member should be distributed to two *cy pres* recipients.
12 Biehl Decl. ¶ 39-42. As discussed during the preliminary approval hearing, the recipients of the
13 *cy pres* award will be the non-profit organizations Public Justice and California Rural Legal
14 Assistance, and the Parties have agreed to distribute the *cy pres* award evenly between the two
15 organizations, subject to Court approval. *Id.* at ¶ 41. Counsel for AAA NCNU is familiar with
16 the work of California Rural Legal Assistance by reputation, and Class Counsel has previously
17 worked with Public Justice. *Id.* at ¶ 42. One member of the Class Counsel team was a prior
18 Board member of Public Justice but no longer has any responsibility, influence, or financial
19 interest in the organization. *Id.*

20 Up to \$3,000,000 will be allocated to 17200 Class members and to the *cy pres* recipients.
21 Biehl Decl., Ex. 1 at p. 10. The Settlement Administrator will follow the procedures set by the
22 State of California Department of Industrial Relations with respect to any uncashed checks
23 distributed to 17200 Class claimants. *Id.* at p. 10.

24 **B. Release of Claims Under the Settlement**

25 The Settlement contains mutual releases of the Parties for all claims and cross-claims as
26 well as releases from Breach of Contract Class and 17200 Class members' claims against AAA
27 NCNU. Biehl Decl. ¶ 43. The releases encompass all claims or causes of action that were pled
28

1 or could have been pled in any version of the Complaint based on facts or claims alleged therein.
2 Biehl Decl. ¶ 43; *see also id.* at Ex. 1 at pp. 19-23.

3 **C. Preliminary Approval, Settlement Notice, and Class Member Response**

4 On December 13, 2018, the Parties attend the hearing on Plaintiffs' motion for
5 preliminary approval. Biehl Decl. ¶ 25. After updating some information in the proposed
6 notices, the Court granted preliminary approval of the settlement on December 14, 2018. *Id.*

7 The Settlement Notices were distributed as ordered by the Court. Sternberg Decl. ¶¶ 7-
8 21. The Notices included all necessary for Class Members to make an informed evaluation of
9 the Settlement: (i) an explanation of the nature of the action and the claims asserted; (ii) the
10 Settlement consideration, including the amount of the monetary payment and the scope of the
11 releases that the Parties will obtain; (iii) the Parties' reasons for proposing the Settlement; (iv)
12 that Class Counsel would apply for an award of attorneys' fees in an amount not to exceed 20%
13 of the \$4,300,000 settlement payment, for expenses not to exceed \$530,000, and for Incentive
14 Awards for the Class Representatives not to exceed \$7,500; (v) how to appear at the Final
15 Approval Hearing and the procedure for objecting to the Settlement; (vi) how 17200 Class
16 Members can make a claim for their share of the Settlement; (vii) the deadlines for Settlement-
17 related events; and (viii) the binding effect that a final judgment approving the Settlement will
18 have on Class members. The Notices were distributed directly to Class members via mail and e-
19 mail and were published in California newspapers and on the class action website. Sternberg
20 Decl. ¶¶ 18-20.

21 Neither the Settlement Administrator nor the Parties have received a single objection to
22 the Settlement. Sternberg Decl. ¶ 30. The Settlement Administrator has received 1,012 claims
23 from 17200 Class Members. *Id.* at ¶ 25. Using the total number of presumed 17200 Class
24 members, this equates to a claims rate of roughly 15 percent — which is standard for class
25 actions.

26 **D. Initial Settlement Administration and Class Member Share Estimates**

27 The Settlement Administrator has also corresponded with Class members, has processed
28 claims, and has begun initial distribution calculations pursuant to the Settlement Agreement and

1 as required by the Court's Preliminary Approval Order. *See* Sternberg Decl. ¶¶ 32-35. The
2 claims deficiency process is still ongoing, but presently the average share amount for Breach of
3 Contract Class members is \$6,692.69, with the range of recovering Class members being \$4.02-
4 \$78,418.86.⁵ The average award for 17200 Class members is \$288.92, ranging from \$12.73 to
5 \$2,634.30, with a total of \$1,234,169.02 being distributed to 17200 Class members. These
6 figures assume that approximately 139 Class members will ultimately cure their deficient
7 claims.⁶ As agreed by the Parties and discussed during the preliminary approval hearing, the
8 need for a *cy pres* award exists with the 17200 Class because it is not possible to reach all
9 presumed Class members, not all presumed Class members filed claims (as expected). At
10 present, the estimated *cy pres* payment is approximately \$370,000 per *cy pres* recipient.

11 **E. Plaintiffs' Motion for Attorneys' Fees, Expenses, and Incentive Awards**

12 Class Counsel and Plaintiffs filed their motion for attorneys' fees, expenses and service
13 independent of this motion. They requested an award of attorneys' fees for \$750,000
14 (approximately 17% of the settlement amount and 3% below the agreed cap) and up to \$530,000
15 in expenses. Biehl Decl. ¶ 45. Plaintiffs also requested approval of service awards in the
16 amount \$7,500 for each of the four Class Representatives. *Id.*

17 **IV. THE SETTLEMENT WARRANTS FINAL APPROVAL**

18 **A. Legal Standard**

19 California has a well-established and strong public policy favoring settlement of
20 complex, class action litigation. *See Hamilton v. Oakland Sch. Dist.* (1933) 219 Cal. 322, 329
21 ("It is the policy of the law to discourage litigation and to favor compromises"); *Bell v. Am. Title*
22 *Ins. Co.* (1991) 226 Cal.App.3d 1589, 1607. Representative plaintiffs cannot settle or dismiss
23

24 ⁵ All present share calculations assume Court approval of Plaintiffs requests for fees, expenses,
25 and service awards and deduct the total amount (\$1,468,000). Commensurate with the value of
26 each Class Settlement, 69.8% of this figure has been deducted from the 17200 Class GSA, and
30.2% has been deducted from the Breach of Contract GSA.

27 ⁶ The Settlement Administrator has also completed present calculations for the hypothetical
28 scenario where no 17200 Class members cure their claims. These figures appear in paragraph 35
of the Sternberg Declaration.

1 actions without court approval. Cal Rules of Court, rule 3.769(a); *see also*, 9 Witkin, Summary
2 of Cal. Law (10th ed. 2005), Corporations, §178 (citing *Whitten v. Dabney*, (1915) 171 Cal. 621,
3 631); *Spellacy v. Superior Court*, (1937) 23 Cal.App.2d 142, 148; *Ensher v. Ensher, Alexander*
4 *& Barsoom*, (1960) 187 Cal.App.2d 407, 410.

5 Approval of a class action settlement is a two-step process, including both preliminary
6 approval and, after notice of the settlement is provided to class members, final approval. Cal.
7 Rules of Court, rule 3.769(c), (e)-(g); *see also* Ann. Manual for Complex Litigation §21.632-633
8 (4th ed. 2016); *Dunk v. Ford Motor Co.*, (1996) 48 Cal.App.4th 1794, 1801. This Court has
9 granted preliminarily approved the Settlement and authorized notice to be distributed to Class
10 members to inform them of the Settlement terms, to notify them of their right to appear and
11 object, and to allow for a claims process for the 17200 Class. Such notice has been administered,
12 and 17200 Class members have submitted claims. *See* Sternberg Decl. ¶¶ 7-21.

13 Now, at the second step of the approval process, the Court must conduct a hearing and
14 inquiry into the fairness of the proposed settlement to determine whether the Settlement is fair,
15 reasonable and adequate to Class Members. *See* Cal. Rules of Court, rule 3.769(a) and (g); *see*
16 *also*, Manual for Complex Litigation §§21.634-635 (4th ed. 2016). Under California law, a
17 settlement is presumptively fair where, as here: “(1) the settlement is reached through arm’s-
18 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to
19 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
20 objections is small.” *Dunk*, 48 Cal. App. 4th at 1802. In addition, courts may consider many
21 factors including: (1) the strength of plaintiff’s case; (2) the risk, expense, complexity and likely
22 duration of further litigation; (3) the amount offered in settlement; (4) the extent of discovery
23 completed and the stage of the proceedings; and (5) the experience and view of counsel. *Id.*
24 However, courts further recognize that these factors are not exhaustive and that the reviewing
25 court should tailor its consideration of the settlement to the facts of each case. *Id.* at 1801
26 (“Ultimately, the court’s determination is nothing more than ‘an amalgam of delicate balancing,
27 gross approximations and rough justice.’”). Based upon the record in this action, the terms of the
28 Settlement, and the factors set forth above, the Settlement warrants final approval.

1 **B. The Relevant Factors Support Final Approval**

2 **1. The Settlement Was Reached Via Arm’s-Length Bargaining**

3 The Settlement is the product of difficult and vigorous arm’s-length negotiations between
4 the parties, who were represented by highly-experienced attorneys. Biehl Decl. ¶¶ 44, 51-53.
5 The ultimate resolution of the case was based on two separate mediations with experienced
6 mediators after extensive settlement communications regarding each, including months of
7 negotiations to finalize the terms of the Settlement. See Biehl Decl. ¶¶ 22-23. Further, Class
8 Counsel has significant experience in complex and class action litigation and has negotiated
9 numerous settlements of complex cases and class actions. Biehl Decl. ¶ 50, Exs. 3-4. Moreover,
10 the most recent negotiations were conducted with the assistance of an independent mediator, the
11 Hon. Richard Kramer. See Biehl Decl. ¶ 23. In *Dunk*, the Court of Appeal noted in support of
12 its conclusion that a settlement was fair and reasonable, that “[t]he independent mediator, a
13 retired superior court judge and appellate justice with substantial experience and respect in the
14 legal community,” had recommended the settlement. Here, the Settlement has a similar stamp-
15 of-approval, as Judge Kramer was diligently involved in the mediation process and was a factor
16 in the parties reaching the initial terms of the Settlement after a 13-hour mediation session. See
17 *id.*

18 **2. The Settlement Was Negotiated After Substantial Investigation and**
19 **Vigorous Litigation by Counsel with Extensive Experience in Complex**
20 **and Class Action Litigation**

21 Class Counsel has concluded that the Settlement is well-advised and in the best interests
22 of Class Members. Biehl Decl. ¶ 51. In reaching this determination, Class Counsel engaged in
23 considerable investigation, analysis, and prosecution of the claims and defenses asserted in the
24 Action, as they (i) analyzed and drafted complaints against AAA NCNU; (ii) engaged in
25 extensive motion practice (briefing over 40 motions), including successfully defeating AAA
26 NCNU’s demurrers, class certification challenges, and motions for summary judgment; (iii)
27 reviewed over 135,000 documents; (iv) served and responded to 1,915 written discovery
28 requests; (v) conducted and defended over 45 party and non-party depositions; (vi) retained and
consulted with organizational control, employment, employee benefits, and damages experts;

1 and (vii) participated in comprehensive, arm's-length negotiations with Defendants and their
2 representatives. *Id.*

3 Indeed, as documented in the Settlement, it was only reached after years of extensive
4 litigation, two separate mediations, comprehensive settlement communications following
5 Plaintiffs' review of the entire documentary record in the Action and depositions of key
6 witnesses, experts, and various Class Members. Biehl Decl. ¶ 52. Thus, in recommending that
7 the Court approve the Settlement, Class Counsel has undertaken substantial efforts to ensure that
8 they are fully advised of the claims and defenses in the case. *Id.*

9 Further, the Settlement negotiations were conducted by highly qualified counsel
10 experienced in complex and class action litigation. Biehl Decl. ¶¶ 50-53. Based on their
11 experience and five years of factual and legal research, continual case assessment, and relentless
12 prosecution (and AAA NCNU's vigorous defense), Class Counsel submit that the Settlement
13 provides benefit to Class Members. *See* Biehl Decl. ¶¶ 50-55. *Nat'l Rural Telecomm'ns Coop.*
14 *v. DIRECTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 528 (“‘Great weight’ is accorded to the
15 recommendation of counsel, who are most closely acquainted with the facts underlying
16 litigation.”) (quoting *In re Painwebber Ltd. P'ships Litig.*, (S.D.N.Y. 1997) 171 F.R.D. 104,
17 125; *7-Eleven Owners for Fair Franchising v. Southland Corp.*, (2002) 85 Cal.App.4th 1144 at
18 1152. As detailed above, the average share amount for Breach of Contract Class members is
19 approximately, \$6,700 with the highest recovery being nearly \$78,500. Sternberg Decl. ¶ 33.
20 The average share amount for 17200 Class members is nearly \$290, with the highest at \$2,634.
21 *Id.* at ¶ 35. These are great recoveries for Class members, especially in light of the risks
22 discussed below, and these benefits favor of approval of the Settlement

23 3. Consideration of Plaintiffs' Claims Weighs in Favor of Final Approval

24 In evaluating final approval, the merits of the underlying claims “are not a basis for
25 upsetting the settlement of a class action[,]” and “the settlement or fairness hearing is not to be
26 turned into a trial or rehearsal for trial on the merits.” *7-Eleven*, 85 Cal.App.4th 1145, 1150.
27 Here, Plaintiffs' claims have merit and do pose risk for AAA NCNU. Biehl Decl. ¶¶ 54-55.
28 During the litigation, AAA NCNU vigorously defended the claims with the assistance of

1 experienced employment and class action counsel. Biehl Decl. ¶ 53. While Plaintiffs continue
2 to believe their claims have merit, Plaintiffs equally recognize that further litigation, trial, and
3 guaranteed appeal of the complex issues presented would be accompanied by immense expense,
4 delay, and uncertainty for the Parties and Class Members. Biehl Decl. ¶ 54. Moreover, while
5 Plaintiffs and Class Counsel are not blinded to the fact that this case has substantially less value
6 than it did when originally brought. *Id.* This is principally due to the loss of Plaintiffs' largest
7 monetary claim at summary judgment and to AAA NCNU's settling with a number of Class
8 members before the Classes were certified. *Id.* Having presided over this action and given the
9 Court's familiarity with Plaintiffs' counsel and their efforts in this litigation, the Court may
10 properly determine "that the consideration being received for the release of the class members'
11 claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the
12 particular litigation." *See Luckey v. Superior Court*, (2014) 228 Cal.App.4th 81 at 94, n.13
13 (citation omitted).

14 **4. The Risk, Expense, Complexity, and Likely Duration of the Action**
15 **Weigh in Favor of Preliminarily Approving the Settlement**

16 The proposed Settlement provides for the payment of \$4,300,000 million by AAA
17 NCNU, which will be distributed to members of the Breach of Contract Class and the 17200
18 Class. *See* Biehl Decl. Ex. 1. Without this resolution, continued litigation and trial would
19 involve complex legal and factual issues and would extend over months, if not years, as each
20 party would almost certainly appeal any adverse judgment. Biehl Decl. ¶ 55. Even if Plaintiffs
21 were successful and prevailed at trial, legal issues regarding preservation of the class (to which a
22 motion for decertification was pending before settlement), California's legal test for employment
23 (which is currently in flux), and the myriad issues that could be appealed would sit idly awaiting
24 determination and would further delay resolution of this action. *Id.* Of course, continued
25 litigation would cause all parties to incur additional expense, time, and uncertainty. *Id.* In light
26 of the complexity of the legal and factual issues, there was some risk that the action would result
27 in judgment for AAA NCNU, and Class Members might never have obtained *any* recovery. *Id.*
28 The Settlement eliminates these and other risks of continued litigation. Thus, this factor supports

1 approval of the settlement. *See, e.g., Frame v. Hillman*, (S.D. Cal., July 31, 2002, No. 01-CV-
2 2193H (LAB)) WL 34520817 at *11 (approving global settlement and attorneys’ fee award to
3 counsel whose “combined efforts achieved remarkable results despite the risks involved” where
4 counsel “coordinated the information gathering by the many investors, ... and catalyzed the
5 dialogue that ultimately led to this settlement”); *Officers for Justice v. Civil Service Com’n of*
6 *City and County of San Francisco*, (9th Cir. 1982) 688 F.2d 615 at 625.

7 **5. The Benefits to Class Members and Their Response to the Settlement**
8 **Supports Final Approval**

9 A court considering an application for settlement approval should not decide the merits of
10 the underlying case when approving a settlement for the parties. *See 7-Eleven Owners*, 85
11 Cal.App.4th at 1145. Instead, the court should review the settlement terms to confirm that the
12 presumption of fairness cannot be overcome as to the specific settlement at hand. *Id.* Here, the
13 Settlement provides for a \$4,300,000 cash payment. Biehl Decl. Ex. 1 at p. 9. This represents
14 more than fair recovery for the Classes. And on a per-class-member basis, the settlement shares
15 are substantial for many class members, with average payments being \$6,700 for the Breach of
16 Contract Class and \$289 for the 17200 Class. Sternberg Decl. ¶¶ 33-35.

17 As documented in the Settlement and Biehl Declaration, this result was only possible
18 after Plaintiffs spent years investigating and analyzing the claims, poured over nearly 2,000
19 written discovery requests and over 135,000 documents, took and defend over 45 depositions,
20 briefed over 40 motions (including class certification that required multiple hearings and rounds
21 of briefing and five summary judgment motions), and engaged in two separate mediations. Biehl
22 Decl. ¶ 51. In sum, Class Counsel has undertaken substantial efforts to ensure the Settlement is
23 in the best interests of both Breach of Contract Class Members and 17200 Class Members. Biehl
24 Decl. ¶¶ 50-55.

25 Class members are also satisfied with Settlement. First, there were *no objections* filed.
26 Sternberg Decl. ¶ 30. Second, over 1,000 claims were filed to participate in the 17200 Class
27 settlement. *Id.* at ¶ 25. Third, Class Counsel has received various calls from owners of contract
28

1 stations and other 17200 Class members expressing gratitude for obtaining the Settlement. Biehl
2 Decl. ¶ 56.

3 Finally, the 17200 Class allocation (up to \$3,000,000) also achieves cash compensation
4 for claims that could have resulted in no recovery at all for Class Members because at the time of
5 the Parties' mediation, AAA NCNU's motion for decertification was pending. Biehl Decl. ¶ 55;
6 *see also id.*, Ex. 1

7 **V. CONCLUSION**

8 Plaintiffs respectfully request that the Court enter an order in substantially the same form
9 as the [Proposed] Order Granting Final Approval of the Settlement, approve Plaintiffs' request
10 for attorneys' fees, expenses and service awards, and enter judgment in this action.

11 Dated: April 17, 2019

Respectfully submitted,

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