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23 **UNITED STATES DISTRICT COURT**  
24 **NORTHERN DISTRICT OF CALIFORNIA**  
25 **OAKLAND DIVISION**

26 STEVE RABIN and JOHN CHAPMAN,  
27 on behalf of themselves, and all others  
28 similarly situated,

Plaintiffs,

v.

PRICEWATERHOUSECOOPERS LLP,  
Defendant.

Case No. 16-cv-02276-JST

**NOTICE OF MOTION AND MOTION FOR  
PRELIMINARY SETTLEMENT APPROVAL  
ORDER**

Judge: Jon S. Tigar  
Hearing Date: March 11, 2020  
Hearing Time: 2:00 p.m.  
Courtroom: Courtroom 6, 2nd Floor

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**NOTICE OF MOTION AND MOTION**

PLEASE TAKE NOTICE that on March 11, 2020, at 2:00 p.m., or as soon thereafter as the matter may be heard, in Courtroom 6 – 2nd Floor of this Court’s Oakland Courthouse, located at 1301 Clay Street, Oakland, California, Plaintiffs Steve Rabin and John Chapman, individually and on behalf of all others similarly situated (“Plaintiffs”) will, and hereby do, move this Court for the following relief with respect to the Collective and Class Action Settlement Agreement (the “Settlement,” attached as Exhibit A to the Declaration of Jahan C. Sagafi in Support of Motion for Preliminary Settlement Approval Order (“Sagafi Decl.”)) with Defendant PricewaterhouseCoopers LLP (“PwC”):

1. that the Court certify, for settlement purposes only, a settlement class pursuant to Federal Rule of Civil Procedure 23(b)(3);
  2. that the Court approve prospective relief under Federal Rule of Civil Procedure 23(b)(2);
  3. that the Court appoint Plaintiffs as representatives of the Class;
  4. that the Court appoint Plaintiffs’ attorneys as Class Counsel;
  5. that the Court grant preliminary approval of the Settlement;
  6. that the Court approve mailing to the Class Members the proposed Class Notice;
  7. that the Court appoint JND Legal Administration as the Settlement Administrator;
- and
8. that the Court schedule a hearing for final approval of the Settlement.

This Motion is made on the grounds that the Settlement is the product of arms-length, good-faith negotiations; is fair, reasonable, and adequate to the Class; and should be preliminarily approved, as discussed in the attached memorandum.

The Motion is based on: this notice; the following memorandum in support of the motion, the Sagafi Decl. (which annexes a copy of the Settlement); the Court’s record of this action; all matters of which the Court may take notice; and oral and documentary evidence presented at the hearing on the motion. This motion is unopposed by PwC.

1 Dated: March 3, 2020

Respectfully submitted,

2 By: /s/ Jahan C. Sagafi

3 Jahan C. Sagafi

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**MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION**

**I. INTRODUCTION**

Plaintiffs Steve Rabin and John Chapman (“Plaintiffs”), on behalf of themselves and the proposed Class and Collective Members,<sup>1</sup> and Defendant PricewaterhouseCoopers, LLP (“PwC”) (collectively, the “parties”), have negotiated a Settlement of their age discrimination claims on behalf of Older<sup>2</sup> applicants who applied for and were not hired to work in a Covered Position<sup>3</sup> (Associate, Experienced Associate, or Senior Associate in PwC’s Tax or Assurance lines of service) during the Covered Period.<sup>4</sup> Declaration of Jahan C. Sagafi in Support of Motion for Preliminary Settlement Approval Order (“Sagafi Decl.”) ¶ 27 Ex. A (Settlement Agreement). This Settlement provides both (a) a common fund of \$11,625,000 for the Class Members’ benefit (including payment of administration costs, attorneys’ fees and costs, and service award payments) and (b) programmatic relief covering various aspects of PwC’s employment practices, to be maintained during a two-year implementation period, owned by PwC’s Chief Purpose & Inclusion Officer working in concert with an external Implementation Expert. Specifically, PwC has committed to implementing and enhancing important recruiting and hiring initiatives for the benefit of older applicants, including: (1) hiring an industrial/organizational expert consultant (the Implementation Expert) to advise on training on age inclusivity for leadership and employees involved in recruiting and hiring as well as other aspects of training, recruiting Older workers, and avoiding age bias in the process, (2) advertising job opportunities to Older workers, taking Class Counsel’s recommendations into account, (3) for applicants who have graduated from college, not to ask, pre-offer, for graduation date information or have eligibility limits based on graduation year or age, (4) including age as one aspect of PwC’s non-discrimination policy in

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<sup>1</sup> For ease of reference, Class and Collective Members will be referred to collectively as “Class Members.”

<sup>2</sup> For ease of reference, “Older” means individuals aged 40 or older.

<sup>3</sup> Unless otherwise specified herein, all capitalized terms have the meaning defined in the Settlement Agreement, which is attached to the Declaration of Jahan C. Sagafi in Support of Motion for Preliminary Settlement Approval Order (“Sagafi Decl.”) as Exhibit A.

<sup>4</sup> October 18, 2013 to January 21, 2020 for Collective Action Plaintiffs and September 8, 2013 to January 21, 2020 for the Rule 23 Classes.

1 official notifications of that policy,<sup>5</sup> (5) permitting alumni to apply for on-campus openings of  
2 Covered Positions, (6) making public and internal statements expressing PwC's commitment to  
3 diversity in hiring, including age-diverse photographs and avoiding text showing a lack of support  
4 for age-diverse job applicants in its recruiting materials and Careers website, and issuing two joint  
5 press releases announcing the settlement, (7) ensuring that the complaint procedure covers age  
6 discrimination complaints and providing information to the Implementation Expert about age-  
7 related complaints, (8) ownership of implementation by PwC's Chief Purpose & Inclusion  
8 Officer, who will meet with the Implementation Expert 6, 12, and 24 months after Finality, (9) a  
9 reserve period of 15 months after Finality, during which Claimants who believe they suffered age  
10 discrimination or retaliation in not being hired into a Covered Position during that 15-month  
11 period can request additional compensation from a separate fund set aside from the Gross  
12 Settlement Amount, and (10) continuing jurisdiction by the Court.

13       The proposed Settlement and this Motion readily satisfy the requirements of Rule 23, the  
14 ADEA, Ninth Circuit precedent, and established Northern District practice, including the Class  
15 Action Settlement Guidance. *See, e.g., Roes, 1-2 v. SFBSC Mgmt., LLC*, 944 F.3d 1035, 1060  
16 (9th Cir. 2019). As an initial matter, the litigation has been intense. The parties have zealously  
17 litigated the substantive and procedural issues presented by this case, including a determination of  
18 whether the ADEA allows Plaintiffs to assert disparate impact hiring claims, whether the case can  
19 be conditionally certified as a collective, and various discovery disputes. Discovery has been  
20 extensive, including PwC's production of 253,203 documents totaling 1,042,467 pages. The  
21 parties have participated in months of settlement negotiations spread across the last year and a  
22 half, supervised by two highly experienced mediators – Robert Meyer of JAMS, who has deep  
23 experience litigating and mediating complex disputes including in the accounting industry  
24 specifically, and David A. Rotman of Mediated Negotiations, who is one of the premier  
25 employment discrimination class action mediators in the nation. As more fully discussed below,  
26 Plaintiffs respectfully submit that this exceptional Settlement should be preliminarily approved,  
27

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28 <sup>5</sup> PwC states that age is already included in PwC's official non-discrimination policy.

1 such that Notice can issue to the Class Members to allow them to comment on the settlement, file  
2 claim forms, and/or opt out, as they deem appropriate.

## 3 **II. BACKGROUND**

### 4 **A. Factual and Procedural Background**

5 On April 27, 2016, Plaintiff Steve Rabin filed the original complaint on behalf of a  
6 nationwide ADEA collective and a California class. On September 8, 2016, John Chapman  
7 joined as a plaintiff asserting Michigan class claims. Plaintiffs allege that PwC discriminated  
8 against them and other Older applicants seeking positions in the Covered Positions in violation of  
9 the federal Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 621, *et seq.* (“ADEA”),  
10 the California Fair Employment and Housing Act, Cal. Gov. Code §§ 12900, *et seq.* (“FEHA”),  
11 the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (“UCL”), and  
12 the Elliott-Larsen Civil Rights Act, Mich. Comp. Laws § 37.2101, *et seq.* (“MCRA”).

13 In late 2016, PwC moved for judgment on the pleadings, arguing that the ADEA does not  
14 allow for disparate impact claims. ECF No. 55. The Court denied PwC’s motion, distinguishing  
15 the Eleventh Circuit’s *en banc* decision in *Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958  
16 (11th Cir. 2016). ECF No. 74. Later, the Seventh Circuit, also *en banc*, agreed with the Eleventh  
17 Circuit. *Kleber v. CareFusion Corp.*, 914 F.3d 480 (7th Cir.), *cert. denied*, 140 S. Ct. 306 (2019).

18 The parties engaged in substantial pre-conditional-certification discovery, with PwC  
19 producing 1,042,467 pages of documents through an extensive ESI process. In addition, PwC  
20 produced Class Member and comparator data, from which Plaintiffs made simple calculations of  
21 age disparities in PwC’s hiring. Sagafi Decl. ¶ 20.

22 After initially denying Plaintiffs’ motion for conditional certification of a nationwide  
23 ADEA collective, *Rabin v. PricewaterhouseCoopers, LLC*, No. 16-cv-02276, 2018 WL 3585143,  
24 at \*4 (N.D. Cal. July 26, 2018), the Court granted Plaintiffs’ renewed motion on March 28, 2019,  
25 ECF No. 270. Plaintiffs issued notice to approximately 17,000 potential collective members, and  
26 3,456 individuals opted in. Sagafi Decl. ¶ 21.

27 On September 21, 2018, the parties attended their first full-day mediation, overseen by  
28 Robert Meyer of JAMS. *Id.* ¶ 22. Although no settlement was reached, the parties continued to

1 negotiate for several months, eventually reaching a tentative agreement to detailed programmatic  
2 relief terms. *Id.* ¶ 23. Then, this fall and winter, the parties began to litigate opt-in discovery  
3 issues while, in parallel, holding a second round of settlement talks. *Id.* ¶ 24. On January 21,  
4 2020, the parties attended a second full-day mediation with David A. Rotman, one of the  
5 preeminent employment class action mediators in the country. *Id.* ¶ 25. At the close of  
6 mediation, the parties reached an agreement on the total monetary amount of the Settlement, and  
7 over the ensuing three weeks intensively negotiated a term sheet, which was signed on February  
8 17, 2020. *Id.* ¶ 26. On March 2, 2020, the parties executed a long-form Settlement Agreement.  
9 *Id.* ¶ 27.

### 10 **III. THE PROPOSED SETTLEMENT**

#### 11 **A. The Settlement Classes**

12 For settlement purposes only, PwC agrees to certification of the following classes  
13 (collectively, the “Settlement Class”), defined as:

14 (1) “**California Class**” means all applicants who, between September 8, 2013 and  
15 January 21, 2020 (inclusive), (a) applied for and were denied a Covered Position in  
16 California or (b) resided in California at the time they applied to a Covered Position and  
17 were denied; and were aged 40 or older at the time of application. “**Michigan Class**”  
18 means all applicants who, between September 8, 2013 and January 21, 2020 (inclusive),  
19 (a) applied for and were denied a Covered Position in Michigan or (b) resided in Michigan  
20 at the time they applied to a Covered Position and were denied; and were aged 40 or older  
21 at the time of application.

22 (2) “**Settlement Collective**” means all the applicants (a) who applied to and were  
23 denied Covered Positions on or after October 18, 2013, (b) who were aged 40 or older at  
24 the time of application, and (c) who opted in to this Litigation pursuant to the federal Age  
25 Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 621, et seq.  
26 (“ADEA”) on or before January 21, 2020.

1 Settlement Agreement §§ 1.3, 1.28, 1.43. The parties estimate that there are approximately 5,000  
2 Settlement Class Members, including the 3,456 opt-ins.<sup>6</sup>

3 **B. Settlement Overview**

4 The Settlement provides two important forms of relief for the Class Members: (1) a non-  
5 reversionary common fund of \$11,625,000 to compensate for financial and emotional harm of  
6 Class Members who choose to file claim forms (“Claimants”) and (2) programmatic relief  
7 whereby PwC commits to enhance its recruiting and hiring processes for Older workers who may  
8 wish to apply to the Covered Positions in the future.

9 **1. Monetary Relief**

10 The \$11,625,000 Settlement Amount will cover: (a) payments to Claimants, including all  
11 applicable taxes; (b) Service Awards of \$20,000 for each of the two Plaintiffs, plus \$2,000 for  
12 each of the 28 declarants<sup>7</sup> who agree to sign general releases (for a total of up to \$96,000); (c)  
13 Class Counsel’s fees up to 40% of the Gross Settlement Amount and actual litigation costs and  
14 expenses up to \$295,000; (d) settlement administration costs, not to exceed \$105,330 absent  
15 unforeseen circumstances and Court approval, (e) the costs of the Implementation Expert up to  
16 \$20,000, and (f) a \$300,000 reserve fund to compensate Claimants for any alleged and valid age  
17 discrimination claims based on PwC’s failure to hire them into a Covered Position to which they  
18 apply during the 15-month window following Finality.<sup>8</sup> Settlement Agreement §§ 1.31, 4.2.

19  
20  
21 <sup>6</sup> While the parties know that there are 3,456 individuals who opted into the litigation, they cannot  
22 yet know how many absent California and Michigan class members there are, because those class  
23 periods extend beyond the period for which the parties have run the date of birth search process  
24 using Accurant and Transunion, *see* ECF No. 130. If the Settlement is preliminarily approved,  
25 PwC will provide data to the vendor JND to collect date of birth information to determine how  
26 many applicants were Older and therefore Class Members.

27 <sup>7</sup> The 28 individuals, each of whom submitted a sworn declaration in support of Plaintiffs’  
28 motions for collective action certification, are Bon Joon Ahn, Nii-Ama Akuete, James Boyd  
Bankston, Brian Barnhart, Harry Brown III, Lori Cairns, Dickran Guerguerian, Brian Griffith,  
Birgit Halliday, Sonya Hearn, James Huffman, Barry Iio, Heather Jackson, Charles Kelly, Kelli  
King, Sherene Lane-Pryce, Salvador Maciel, Michael Narey, Karl Painter, Ralph Penso, Lynette  
Rhodes, Girma Tiruneh, Darryl Tolliver, Harry Treinen, Daniela Wells, Cynthia Woolbright,  
Jocelyn Wooten, and William Zatek.

<sup>8</sup> This “not-to-exceed” cost is consistent with similar work performed by settlement  
administrators on similar matters. *See* Sagafi Decl. ¶ 33.



1 The plan of allocation takes care to allocate money roughly according to Plaintiffs'  
 2 Counsel's assessment of the strength of each Claimant's litigation position, based on a reasonable  
 3 number of variables derived from data produced by PwC and input from the Claimants  
 4 themselves, and evaluated by the Settlement Administrator. Plaintiffs believe that this approach  
 5 will ensure that Claimants receive an appropriate share of the Net Settlement Fund. PwC does  
 6 not endorse the plan of allocation or make any judgment regarding a Claimant's appropriate  
 7 share. Specifically, Claimants' awards will be determined using a point system designed by  
 8 Plaintiffs' Counsel that balances precision, fairness, and administrability using the following  
 9 variables: (1) whether they are a California/Michigan opt-in class member (2 points), an opt-in  
 10 non-class member (i.e., an opt-in from a different state) (1.5 points), or a California/Michigan  
 11 non-opt-in (i.e., a class member but not an opt-in),<sup>9</sup> (2) a general assessment of the strength of any  
 12 individual's argument that they were qualified to work at PwC (10x points for those selected by  
 13 PwC to interview for a Covered Position; and, for the rest, 0x, 1x, 2x, or 3x, as determined by the  
 14 Settlement Administrator based on basic information provided by the Claimants in their Claim  
 15 Forms regarding educational background (college, college major, college GPA, graduate school,  
 16 graduate school GPA) and professional background (whether they had a CPA and their relevant  
 17 work experience at the time of their last application to a Covered Position)). The Settlement  
 18 Administrator,<sup>10</sup> in consultation with Class Counsel, will score each Claim Form. Claimants who

19 \_\_\_\_\_  
 20 <sup>9</sup> This approach recognizes that (a) opt-ins are already before the Court (by virtue of the Court's  
 21 conditional collective action certification), whereas California and Michigan non-opt-ins would  
 22 not be able to recover money in the lawsuit absent Rule 23(b)(3) certification, (b) ADEA claims  
 23 provide for liquidated damages, and (c) state law claims add value to the ADEA claims (in the  
 24 form of greater relief, such as punitive damages and/or emotional distress damages, as well as  
 25 more settled law enshrining the disparate impact standard).

26 <sup>10</sup> The parties have selected JND Legal Administration as the Settlement Administrator after a  
 27 competitive bidding process. *See* Sagafi Decl. ¶ 28. JND has performed excellently for  
 28 Plaintiffs' counsel several times recently, including in administering the similarly complicated  
 claims process in the *Uber* race and gender discrimination class action settlement before Judge  
 Yvonne Gonzalez Rogers in 2018 (for which the court approved a higher administration fee of  
 \$110,000 for approximately 458 class members). *del Toro Lopez v. Uber Techs., Inc.*, No. 17-cv-  
 06255-YGR, 2018 WL 5982506, at \*14 (N.D. Cal. Nov. 14, 2018); *see* Sagafi Decl. ¶¶ 29 - 31  
 (listing cases JND has worked on with Plaintiffs' counsel in the past two years, including *Uber*).  
 Plaintiffs' counsel is confident that JND's familiarity with the class data (because of their  
 administration of the collective action certification notice process in this case) will streamline the  
 administration and avoid unnecessary delays or overages. Sagafi Decl. ¶ 32.

1 receive zero points (because of a 0x multiplier, because their background suggests they would  
2 have had a relatively weaker claim in litigation) will receive a Default Award of \$200.

3 Any remainder not claimed will either be redistributed to Claimants *pro rata* or given as a  
4 *cy pres* donation to Experience Works, Inc., a nationwide nonprofit dedicated to helping people  
5 age with dignity and purpose and improve quality of life through training, community service,  
6 and employment.<sup>11</sup>

7 Claim Forms can be submitted online or by email, mail, or fax. Consistent with modern  
8 best practices, the Settlement Administrator will maintain a website providing the Notice, Claim  
9 Form, information about deadlines and other relevant dates, key pleadings and orders, frequently  
10 asked questions, and Class Counsel’s contact information.

11 The release is appropriately tailored to claims based on the factual allegations in the  
12 operative complaint (the “Released Claims”). Settlement Agreement § 12. The Named Plaintiffs  
13 and any Declarants who would like to receive a Service Award will also execute a general release  
14 of all claims in exchange for their Service Award payments.

15 Notice will be sent by U.S. mail and email. Additionally, the Settlement Administrator  
16 and Class Counsel are authorized and intend to engage in supplemental efforts to ensure that  
17 Class Members receive and understand the Notice. Reminder emails will be sent halfway through  
18 the Claims Period to anyone who has not submitted a Claim Form or opted out. *Id.* § 9.2.3. Class  
19 Members will have 60 days to object, opt out, and/or submit a Claim Form.

20 After consulting with the proposed Settlement Administrator about its experience, and  
21 based on their communications with the Settlement Collective members to date, Plaintiffs  
22 estimate that approximately 50% of the Class Members will return Claim Forms. *See, e.g.,*  
23 *Astarita v. Pinnacle Entertainment, Inc.*, No. 4:15-cv-00095-GAF (W.D. Mo.) (1,801/3,563 Class  
24 Members filed claims (50.5%)); *Blocher, et al. v. Landry’s Inc.*, No. 8:14-cv-3213-T-35JSS

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26 <sup>11</sup> Experience Works administers part of the Senior Community Service Employment Program,  
27 which is a community service and work-based job training program for older adults that serves as  
28 a bridge to securing unsubsidized jobs with local employers. *See*  
<https://www.experienceworks.org/>. The parties have no connection to Experience Works. Sagafi  
Decl. ¶ 33.

1 (M.D. Fl.) (770/2,437 = 31.6%); *Aquino v. CEVA Logistics U.S. Inc.*, No. 5:14-cv-01795-VAP  
2 (DTBx) (C.D. Cal.) (299/1,856 =16.1%); *Jarrett, et al. v. GGNSC Holdings L.L.C.*, No. 12:4105-  
3 CV-C-BP (W.D. Mo. (2,672/6,119 = 43.7%); *see also* Sagafi Decl. ¶ 35.

4 **2. Programmatic Relief**

5 Perhaps more importantly, PwC agrees to programmatic relief for a period of two years.  
6 Settlement Agreement § 3. The key features of the programmatic relief provided for in the  
7 Settlement Agreement include:

8 **Implementation Expert.** The parties will select a neutral Implementation Expert with  
9 industrial/organizational expertise to act as PwC’s consultant to advise on (1) training on  
10 age inclusivity and overcoming age bias (including implicit bias) for leadership,  
11 employees in the Talent Acquisition group, and personnel who interview candidates and  
12 make hiring decisions for Covered Positions, (2) including an age component in annual  
13 compliance training, (3) ideas for recruiting Older workers for Covered Positions, and (4)  
14 ideas for avoiding age discriminatory impact in job posting procedures, screening and  
15 decisionmaking criteria, and interview questions.

16 The Implementation Expert consultant will meet with PwC’s Chief Purpose & Inclusion  
17 Officer 6, 12, and 24 months after Finality to discuss implementation. At least a month  
18 before each meeting, PwC’s Chief Purpose & Inclusion Officer will provide a status  
19 update as to each area covered by the Settlement. The Implementation Expert will present  
20 questions and suggestions to PwC regarding implementation.

21 **Postings.** PwC shall advertise directly to older populations of potential job applicants.  
22 As part of this initiative, PwC will consider recommendations from Class Counsel.

23 **No use of graduation date.** PwC agrees, for Covered Positions, not to ask pre-offer  
24 applicants who have graduated for their graduation date, and not have eligibility limits  
25 based on graduation year (except where the graduation date is in the future) or age.

26 **Non-discrimination policy.** PwC shall include age as one aspect of PwC’s non-  
27 discrimination policy in official notifications of that policy.

28 **Alumni access to on-campus postings.** PwC shall permit graduates of a school to apply  
to Covered Positions at that school, and alert those schools at which PwC actively recruits  
that such campus-track positions are open to alumni.

**Age discrimination complaint procedure.** PwC’s complaint procedure shall cover  
complaints of age discrimination. PwC will provide the Implementation Expert a  
summary of the substance of post-Finality age-related complaints by applicants to  
Covered Positions, without identifying any individual applicant, and the outcome of each  
such complaint.

1 **Two-year implementation period.** These programmatic changes will be implemented  
 2 over the course of two years post Finality. Separately, on the first two anniversaries post  
 3 Finality, PwC's Chief Purpose & Inclusion Officer will send Class Counsel a letter  
 4 confirming compliance with the settlement terms.

5 **Reserve period compensation.** In addition, a reserve fund of \$300,000 will be set aside  
 6 from the Gross Settlement Fund to compensate Claimants who, during the 15-month  
 7 period after Finality, submit evidence that they applied to a Covered Position and were not  
 8 hired due to age discrimination or retaliation ("Reserve Fund Petitioners").<sup>12</sup> To the  
 9 extent a residue remains from the reserve fund, it will be paid out in the same manner as  
 10 any residue from the Net Settlement Fund.

11 **Continuing jurisdiction.** The Court has continuing jurisdiction during the two-year  
 12 implementation period.

13 **C. Class Representative and Declarant Service Awards**<sup>13</sup>

14 The Settlement provides that Plaintiffs Rabin and Chapman will receive Service Award  
 15 payments of \$20,000 each, and that the 28 Declarants (if they agree to general releases) will each  
 16 receive Service Award payments of \$2,000. Settlement Agreement § 6. These amounts will be  
 17 separate and apart from any other recovery to which they will be entitled under the Settlement as  
 18 Class Members. *Id.* at § 6.3. These payments are intended to compensate them for (a) the  
 19 significant time and effort that Plaintiffs and Declarants have spent on behalf of the Class with the  
 20 prosecution of the claims, (b) the resulting value they have conferred to Class Members, and  
 21 (c) the exposure and risk they incurred by taking a leadership role in a lawsuit that has garnered  
 22 broad media coverage, along with the risk of retaliation in the employment marketplace by  
 23 employers that do not wish to employ someone associated with a class action. *See, e.g., Staton v.*  
 24 *Boeing Co.*, 327 F.3d 938, 976 (9th Cir. 2003) (confirming that non-plaintiffs can receive  
 25 incentive awards under appropriate conditions); *Walton v. AT&T Corp.*, 15-cv-03653-VC, ECF  
 26 No. 221 (N.D. Cal. Feb. 14, 2018) (Chhabria, J.) (awarding \$5,000 each to seven class member  
 27 witnesses); *Galeener v. Source Refrigeration & HVAC, Inc.*, No. 13-CV-04960-VC, 2015 WL  
 28 12976106, at \*3 (N.D. Cal. Aug. 20, 2015) (\$27,000 and \$25,000 to two class representatives);

<sup>12</sup> Reserve Fund Petitioners will receive \$0-10,000 based on the same factors used in the main Claim process, supplemented by any additional showing they wish to make.

<sup>13</sup> This section and the next section preview, at a general level, the more detailed factual and legal presentation Plaintiffs will provide in their Fee Petition to be filed during the Claims period.

1 *Vedachalam v. Tata Consultancy Servs.*, No. 06-cv-0963, 2013 WL 3929129, at \*2 (N.D. Cal.  
 2 July 18, 2013) (Wilken, J.) (awarding \$1,000 to each testifying declarant); *Buccellato v. AT&T*  
 3 *Operations, Inc.*, No. 10 Civ. 00465, 2011 WL 3348055, at \*3 (N.D. Cal. June 30, 2011) (Koh, J.)  
 4 (\$20,000 to lead plaintiff); *Lewis v. Wells Fargo & Co.*, No. 08 Civ. 2670, slip op. at 4 (N.D. Cal Apr.  
 5 29, 2011), ECF No. 315 (Wilken, J.) (\$22,000 and \$20,000 for named plaintiffs); *Ross v. U.S. Bank*  
 6 *Nat'l Ass'n*, No. 07 Civ. 2951, 2010 WL 3833922, at \*4 (N.D. Cal. Sept. 29, 2010) (Illston, J.)  
 7 (\$20,000 service award for each of four class representatives); *Glass v. UBS Fin. Servs., Inc.*, No. 06  
 8 Civ. 4068, 2007 WL 221862, at \*16-17 (N.D. Cal. Jan. 26, 2007) (Chesney, J.) (\$25,000 to each of  
 9 four class representatives); *see also Coates v. Farmers Grp., Inc.*, No. 15 Civ. 01913, 2016 WL  
 10 5791413, at \*2 (N.D. Cal. Sept. 30, 2016) (Koh, J.) (\$5,000 each to two opt-in class members who  
 11 participated in the litigation); *Wellens v. Sankyo*, No. 13 Civ. 00581, 2016 WL 8115715, at \*3 (N.D.  
 12 Cal. Feb. 11, 2016) (Orrick, J.) (\$1,000 to \$6,000 for opt-in witness class members who provided  
 13 declarations or were deposed).

14 **D. Attorneys' Fees and Costs**

15 The Settlement Agreement allows Plaintiffs' Counsel to request attorneys' fees up to 40%  
 16 of the settlement fund and reimbursement of actual out-of-pocket costs up to \$295,000.  
 17 Settlement Agreement §§ 5.1-5.4. Plaintiffs' Counsel's lodestar in this hotly contested litigation  
 18 is already over \$6,488,000, with more work to be performed to (1) secure preliminary approval,  
 19 (2) oversee implementation of notice and respond to Class Member inquiries during the notice  
 20 period, (3) assist the Settlement Administrator in evaluation of the Claim Forms, (4) brief and  
 21 argue final approval, and (5) particularly importantly, provide PwC with recommendations  
 22 regarding advertising to Older workers and manage the reserve fund claims process until  
 23 approximately 2022. Plaintiffs intend to request a 35% fee, or \$4,068,750, which equates to a  
 24 "negative" lodestar multiplier of 0.63x, which will gradually decrease during the coming months  
 25 and years while Plaintiffs' Counsel continue to work for the Class Members' benefit. Plaintiffs  
 26 expect the ultimate lodestar multiplier, after all work is done (around the end of 2022), to be  
 27 approximately 0.60x (or lower), if the Court awards a 35% fee. Looked at another way, once the  
 28 value of the programmatic relief is included on top of the monetary relief (*see* § IV.C.2., below),

1 Plaintiffs believe that a more realistic assessment of the Settlement value is \$16,625,000; the  
2 \$4,068,750 fee is 24.5% of that amount.

3 Plaintiffs' counsel have performed substantial work to earn this fee. During the past four  
4 years of investigation and litigation, Plaintiffs' Counsel (a) defeated a Motion for Judgment on  
5 the Pleadings, ECF No. 55, and an interlocutory appeal of the ruling, ECF No. 84, (b) conducted  
6 extensive discovery, including intensively negotiating a robust ESI process and reviewing a  
7 production of over 253,000 documents, (c) worked closely with expert consultants to carefully  
8 analyze PwC's application data and public date of birth data, (d) conducted extensive legal and  
9 factual research of the claims at issue, (e) engaged in vigorous and hotly-contested motion  
10 practice including two collective action certification motions, (f) zealously represented Plaintiffs  
11 during two mediations and intense post-mediation settlement discussions, and (g) otherwise  
12 aggressively pursued the case to achieve an excellent result for Class Members.

13 A 35% fee is consistent with the Ninth Circuit's and this District's fee jurisprudence,  
14 whereby fee awards in "megafund" settlements of \$50-200 million are based on a benchmark of  
15 25%, which is adjusted downward for settlements over \$200 million and upward for settlements  
16 below \$50 million, as well as being cross-checked for reasonableness using Plaintiffs' counsel's  
17 lodestar. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043 (9th Cir. 2002) (affirming 28% fee in  
18 \$96.885 million settlement, describing "increase-decrease" rule to adjust benchmark up or down,  
19 and holding that size of fund and lodestar cross-check are among factors to be considered in  
20 setting fee rate). Plaintiffs' Counsel will submit their fee and cost request, along with the request  
21 for service payments, ten business days before the objection deadline, to allow Class Members an  
22 opportunity to object or otherwise comment on these aspects of the Settlement. Settlement  
23 Agreement § 5.1.

24 **E. Settlement Administration Costs**

25 The Settlement Administrator has agreed to perform all administration work set forth in  
26 the Settlement Agreement for a maximum payment of \$105,330 (barring unforeseen  
27 circumstances, in which case the Settlement Administrator may request Court approval for an  
28 additional amount on a showing of good cause). The Settlement Administrator's maximum fee

1 amounts to just 0.9% of the total fund, which is reasonable in light of the amount and complexity  
2 of the work to be performed (especially processing the Claim Forms, which will require careful  
3 manual review), and is in line with settlement administration fees in comparable cases. *See, e.g.,*  
4 *Uber*, 2018 WL 5982506, at \*14 (\$110,000 administration fee, equal to 1% of \$10 million  
5 settlement).

#### 6 **IV. ARGUMENT**

7 Settlement approval “involves a two-step process in which the Court first determines  
8 whether a proposed class action settlement deserves preliminary approval and then, after notice is  
9 given to class members, whether final approval is warranted.” *Nat’l Rural Telecomm. Coop. v.*  
10 *DirecTV, Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004); *see also* Manual for Complex Litigation §§  
11 21.632-634 (4th ed. 2004). Preliminary approval requires two elements: First, the court must  
12 determine that the settlement class meets the requirements for class certification if it has not yet  
13 been certified (Fed. R. Civ. P. 23(a) and (b)); and second, the court must determine that the  
14 settlement is fair, reasonable, and adequate (Fed. R. Civ. P. 23(e)(2)). *Hanlon v. Chrysler Corp.*,  
15 150 F.3d 1011, 1025-26 (9th Cir. 1998).

16 Although the Ninth Circuit has not addressed the criteria courts should use to determine  
17 whether to approve an ADEA settlement, district courts in the Ninth Circuit have relied on the  
18 Eleventh Circuit’s decision in *Lynn’s Food Stores, Inc. v. United States*, 679 F.2d 1350 (11th Cir.  
19 1982), which requires the Court to determine whether “the settlement represents a fair and  
20 reasonable resolution of a bona fide dispute.” *Heath v. Google LLC*, No. 15-cv-01824-BLF,  
21 2019 WL 3842075, at \*3 (N.D. Cal. Aug. 15, 2019) (approving ADEA settlement) (citing *Lynn’s*  
22 *Food Stores*, 679 F.2d at 1355).

23  
24  
25  
26  
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28

1           **A. Certification of the Rule 23 Classes Is Proper.**

2           For settlement purposes, the parties agree to certification of the class.<sup>14</sup> “The validity of  
3 use of a temporary settlement class is not usually questioned.” Alba Conte & Herbert B.  
4 Newberg, 4 Newberg on Class Actions § 11:22 (4th ed. 2002).

5           The relevant factors also weigh in favor of certification.

6                   **1. Rule 23(a) Is Satisfied.**

7           First, numerosity is met because joinder of Class Members would be impractical. Fed. R.  
8 Civ. P. 23(a)(1). The Class of thousands of individuals readily meets this standard.

9           Second, commonality is met because “there are questions of law or fact common to the  
10 class.” Fed. R. Civ. P. 23(a)(2). In examining the commonality factor, the Supreme Court has  
11 stated that the focus is on whether there are common issues of fact among class members and  
12 whether class treatment will “generate common answers apt to drive the resolution of  
13 the litigation.” *Abdullah v. U.S. Sec. Associates*, 731 F.3d 952, 957 (9th Cir. 2013) (citing *Wal-*  
14 *Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011)). Here, there are numerous common  
15 questions, such as whether PwC’s policies and practices discriminate against Class Members,  
16 whether they violate the ADEA, the UCL, FEHA, and MCRA, whether PwC’s recruitment and  
17 hiring systems are discriminatory, and what remedies are warranted.

18           Third, typicality is satisfied. Rule 23 typicality requires a finding that the “claims or  
19 defenses of the representative parties [be] typical of the claims or defenses of the class.” Fed. R.  
20 Civ. P. 23(a)(3). Typicality “focuses on the similarity between the lead plaintiff’s legal theories  
21 and those of the people he or she purports to represent.” *Whiteway v. FedEx Kinko’s Office and*  
22 *Print Servs.*, No. 05–cv–2320–SBA, 2006 WL 2642528, at \*6 (N.D. Cal. Sept. 14, 2006);

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23  
24 <sup>14</sup> The Rule 23 Classes proposed in the Settlement Agreement are substantially the same as those  
25 proposed in the First Amended Complaint, ECF No. 42, with the following differences: (1) the  
26 Rule 23 Classes include only qualified applicants, consistent with the Court’s Order denying  
27 conditional certification of an ADEA collective including unqualified applicants (ECF No. 103);  
28 (2) the Rule 23 Class period reaches back three years from the date of the operative Complaint, to  
September 8, 2013 for all claims, by agreement of the Parties; (3) the Rule 23 Classes no longer  
include “deterred applicants,” in recognition of the difficulty of identifying individuals who did  
not act on their desire to apply to PwC. The certified ADEA collective is unchanged in the  
Settlement Agreement.



1 *Hanlon*, 150 F.3d at 1020. Here, Plaintiffs' claims are typical because they challenge the same  
2 policies and practices as the Class Members' claims.

3 Fourth, Plaintiffs have fairly and adequately protected the interests of the class and will  
4 continue to do so. Fed. R. Civ. P. 23(a)(4). The adequacy requirement is met where the class  
5 representative: (1) has common, and not antagonistic, interests with unnamed class members, and  
6 (2) will vigorously prosecute the interests of the class through qualified counsel. *Amchem Prods.,*  
7 *Inc. v. Windsor*, 521 U.S. 591, 625 (1997); *Hanlon*, 150 F.3d at 1020.

8 Here, Plaintiffs, like the Class Members they seek to represent, share an interest in  
9 vigorous prosecution of the claims and in seeing PwC improve its recruitment and hiring  
10 practices. Plaintiffs Rabin and Chapman are adequate representatives of the California and  
11 Michigan classes, respectively, because they allege that they applied to and were denied  
12 employment with PwC in a Covered Position, at the age of 40 or older, despite being qualified,  
13 while residents of their respective states or in applying to a position based on those states. Both  
14 Rabin and Chapman have been dedicated to aggressively prosecuting those claims. The interests  
15 of Plaintiffs and Class Members in seeking compensation for and overhaul of PwC's recruitment  
16 and hiring practices are the same.

17 In addition, Plaintiffs are represented by adequate counsel. Class Counsel are highly  
18 experienced in prosecuting employment discrimination class actions. As detailed further in the  
19 Sagafi Decl., Class Counsel specialize in representing employees in complex employment class  
20 actions, with a track record of obtaining superior results for their clients. *See, e.g., Uber*, 2018  
21 WL 5982506 at \*4 (appointing Outten & Golden as class counsel in \$10,000,000 race and gender  
22 discrimination settlement); *Walsh v. CorePower Yoga LLC*, No. 16-cv-05610-MEJ, 2017 WL  
23 589199, at \*8 (N.D. Cal. Feb. 14, 2017) ("Plaintiff's counsel have a proven track record in the  
24 prosecution of class actions as they have successfully litigated and tried many major class action  
25 cases."); *Jaffe v. Morgan Stanley & Co.*, No. 06-cv-3903-TEH, 2008 WL 346417, at \*8 (N.D.  
26 Cal. Feb. 7, 2008) (Class Counsel have "extensive experience and expertise in prosecuting  
27 employment discrimination class action cases"); *see also* Sagafi Decl. ¶ 5 (collecting cases).

28 For these reasons, Class Counsel satisfy the adequacy requirement of Rule 23(a).

1                   2.       **Certification Is Proper Under Rule 23(b)(3).**

2           Rule 23(b)(3) requires that common questions “predominate over any questions affecting  
3 only individual members, and that a class action is superior to other available methods for fairly  
4 and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). Both of these  
5 requirements are met here.

6           The proposed Rule 23 Class is sufficiently cohesive to satisfy predominance. *Amchem*,  
7 521 U.S. at 623. Predominance does not require “that each element of [a plaintiff’s] claim [is]  
8 susceptible to classwide proof.” *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 469  
9 (2013) (internal quotation marks and citation omitted). Common questions may predominate  
10 “even though certain class members’ circumstances var[y] and some of the defendant’s practices  
11 would have to be proven by anecdotal testimony.” *Delagarza v. Tesoro Ref. & Mktg. Co.*, No.  
12 09–cv–5803–EMC, 2011 WL 4017967, at \*12 (N.D. Cal. Sept. 8, 2011). Here, common issues  
13 predominate because Plaintiffs and the Class Members applied to one of three positions  
14 (Associate, Experienced Associate, Senior Associate) in PwC’s Tax or Assurance lines of service  
15 and were subject to common policies and practices regarding recruitment and hiring. *See Vinole*  
16 *v. Countrywide Home Loans, Inc.*, 571 F.3d 935, 946 (9th Cir. 2009) (citing cases) (focusing on  
17 “centralized control in the form of standardized hierarchy” and “standardized corporate policies  
18 and procedures governing employees”); *Ellis v. Costco Wholesale Corp.*, 285 F.R.D. 492, 538  
19 (N.D. Cal. 2012) (Chen, J.) (noting nationwide system and “specific employment practices that  
20 have caused a disparity”). Superiority rests on factors like individual class members’ desire to  
21 bring individual actions and the utility of concentrating the litigation in one forum. Fed. R. Civ.  
22 P. 23(b)(3). Here, “there is no indication, that class members seek to individually control their  
23 cases, that individual litigation is already pending in other forums, or that this particular forum is  
24 undesirable for any reason.” *Tierno v. Rite Aid Corp.*, No. 05–cv–02520–TEH, 2006 WL  
25 2535056, at \*11 (N.D. Cal. Aug. 31, 2006); *Amchem*, 521 U.S. at 615. The Class Members  
26 likely lack the resources and certainly lack the incentives to secure experienced, qualified  
27 counsel, or to see litigation through to completion on their own. It is generally not rational to  
28 invest hundreds of thousands of dollars in expert and other costs plus scores or hundreds of hours

1 of time and the stress inherent in litigation for a chance to possibly recover money against a  
 2 powerful corporation. In addition, hundreds of individual lawsuits would be wasteful and  
 3 inefficient. *See, e.g., Whiteway*, 2006 WL 2642528, at \*11. Because the class mechanism will  
 4 achieve economies of scale for Class Members, conserve judicial resources, and preserve public  
 5 confidence in the system by avoiding repetitive proceedings and preventing inconsistent  
 6 adjudications, superiority is met.

7 **3. Rule 23(b)(2) is Satisfied.**

8 Under Rule 23(b)(2) class certification, “it is sufficient if class members complain of a  
 9 pattern or practice that is generally applicable to the class,” even if not all class members have  
 10 been injured by the challenged practice. *Walters v. Reno*, 145 F.3d 1032, 1047 (9th Cir. 1998);  
 11 *Civil Rights Educ. & Enf’t Ctr. v. RLJ Lodging Tr.*, No. 15–cv–0224–YGR, 2016 WL 314400, at  
 12 \*9 (N.D. Cal. 2016) (Rule 23(b)(2) settlement class certified); *Garcia v. Johnson*, No. 14–cv–  
 13 01775–YGR, 2015 WL 13439762, at \*1 (N.D. Cal. Aug. 20, 2015) (same); *Bates v. United*  
 14 *Parcel Serv.*, 204 F.R.D. 440, 447–48 (N.D. Cal. 2001) (Henderson, J.).

15 Here, Plaintiffs seek classic 23(b)(2) injunctive relief to modify PwC’s recruitment and  
 16 hiring practices and eradicate discrimination. *See Civil Rights Educ. & Enf’t Ctr.*, 2016 WL  
 17 314400, at \* 9 (“The Supreme Court in *Wal-Mart* recognized that [c]ivil rights cases against  
 18 parties charged with unlawful, class-based discrimination are prime examples’ of what (b)(2) is  
 19 meant to capture.”) (internal quotations omitted); *see also Garcia v. Johnson*, No. 14–cv–01775–  
 20 YGR, 2015 WL 13387594, at \*1 (N.D. Cal. Oct. 27, 2015) (approving prospective relief  
 21 including defendant modifying practices, producing periodic implementation reports to class  
 22 counsel and incorporating changes into training guides for employees); *Curtis-Bauer v. Morgan*  
 23 *Stanley & Co.*, 2008 WL 4667090, at \*5 (programmatic relief disparate impact case approved).

24 **4. Plaintiffs’ Counsel Should Be Appointed as Class Counsel.**

25 Adequacy of class counsel depends on (1) work performed on the matter, (2) experience,  
 26 (3) knowledge of the law, and (4) resources counsel can commit. Fed. R. Civ. P. 23(g)(1)(A).  
 27 Class Counsel readily satisfy these criteria, as set forth above. *Supra*, § IV.A.1; *see also* Sagafi  
 28 Decl. ¶¶ 4-16, 36-37.

1           **B. The Federal ADEA Collective Has Been Certified.**

2           The Court conditionally certified the ADEA collective on April 5, 2019. ECF No. 274. A  
3 total of 3,456 individuals opted in after certifying that they applied for Covered Positions within  
4 the Covered Period and met the minimum qualifications for the positions to which they applied.

5           **C. The Settlement Is Fair, Reasonable, And Adequate.**

6           Once the Court has found class and collective certification proper, the next step of the  
7 preliminary approval process is to assess whether the settlement is “fundamentally fair, adequate,  
8 and reasonable.” *Hanlon*, 150 F.3d at 1026. Typically, the first-stage analysis inquires into  
9 “obvious deficiencies,” with preliminary approval granted if the settlement is non-collusive and  
10 within the range of possible final approval. *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d  
11 1078, 1079 (N.D. Cal. 2007) (Walker, J.); *see also Ruch v. AM Retail Grp., Inc.*, No. 14-cv-  
12 05352-MEJ, 2016 WL 1161453, at \*11 (N.D. Cal. Mar. 24, 2016) (focusing preliminary approval  
13 analysis on “non-collusive negotiations,” the lack of “obvious deficiencies,” and “preferential  
14 treatment,” and being “within the range of possible approval”); Alba Conte & Herbert B.  
15 Newberg, 4 *Newberg on Class Actions*, § 11.41 (4th ed. 2006).

16           When considering whether to grant approval, courts often “put a good deal of stock in the  
17 product of an arms-length, non-collusive, negotiated resolution.” *Rodriguez v. W. Publ’g Corp.*,  
18 563 F.3d 948, 965 (9th Cir. 2009). However, the Ninth Circuit has recently cautioned that pre-  
19 certification settlements merit significant scrutiny. *Roes*, 1-2 944 F.3d at 1043. Courts may also  
20 assess the following factors, which are assessed in greater detail at final approval. These factors  
21 are addressed below: (1) “the strength of the plaintiffs’ case,” “the risk, expense, complexity, and  
22 likely duration of further litigation,” and “the risk of maintaining class action status throughout  
23 the trial,” (2) “the amount offered in settlement,” (3) “the extent of discovery completed and the  
24 stage of the proceedings,” and (4) “the experience and views of counsel.” *Hanlon*, 150 F.3d at  
25 1026. In addition, courts review “the presence of a governmental participant” and “the reaction  
26 of the class members to the proposed settlement.” *Id.* The former is not relevant, and the latter  
27 cannot be gauged at this stage.  
28

1                   **1. Plaintiffs’ Case Faced Significant Hurdles on Liability, Class**  
 2                   **Certification, And on Appeal.**

3                   “Approval of a class settlement is appropriate when ‘there are significant barriers  
 4 plaintiffs must overcome in making their case.’” *Betancourt v. Advantage Human Resourcing,*  
 5 *Inc.*, No. 14–cv–01788–JST, 2016 WL 344532, at \*4 (N.D. Cal. Jan. 28, 2016). Plaintiffs face  
 6 substantial obstacles to full recovery.

7                   First, liability is far from guaranteed because even if Plaintiffs could show statistically  
 8 significant disparities by age in hiring, PwC could point to differences in education, training, and  
 9 experience to attempt to explain away any differences. Relatedly, much of Plaintiffs’ strongest  
 10 evidence is of remarks made by PwC recruiters and interviewers to older candidates. PwC could  
 11 attempt to show that these remarks were individualized and localized rather than part of a  
 12 nationwide pattern or practice or cohesive recruitment and hiring plan directed by PwC.

13                   Second, Plaintiffs faced obstacles in winning class certification because of the multiple  
 14 job titles, lines of service, specialties, geographic locations, management teams, and individual  
 15 qualifications at issue. Hiring class actions, while certifiable, face obstacles in litigation because  
 16 the details of each person’s circumstances – such as their qualifications for the position, interview  
 17 skills, and jobs taken after being rejected – may require individualized inquiries, including as to  
 18 damages. *See, e.g., Berndt v. California Dep’t of Corrections*, No. 03–cv–3174–PJH, 2012 WL  
 19 950625, at \* 13 (N.D. Cal. Mar. 2, 2012) (“potential for multiple mini-trials, even solely as to  
 20 damages, further weakens the case for a finding of superiority”).

21                   Third, even if Plaintiffs were able to prevail on the merits at trial, the risk of losing an  
 22 appeal is high. Although the Court denied PwC an interlocutory appeal of its Motion for  
 23 Judgment on the Pleadings regarding whether Plaintiffs can bring disparate impact claims on  
 24 behalf of applicants under the ADEA, at the close of the case PwC would likely seek a new  
 25 appeal to the Ninth Circuit. There, if Plaintiffs prevailed, it would create a circuit split, increasing  
 26 the likelihood that the Supreme Court might weigh in and reverse. *See Kleber v. CareFusion*  
 27 *Corp.*, 914 F.3d 480 (7th Cir. *en banc*), *cert. denied*, 140 S. Ct. 306 (2019) (job applicants not  
 28

1 covered under ADEA disparate impact provision); *Villarreal v. R.J. Reynolds Tobacco Co.*, 839  
2 F.3d 958 (11th Cir. *en banc* 2016) (same).

3 **2. The Settlement Amount Is Appropriate.**

4 “[P]erhaps the most important factor” courts consider in determining whether to grant  
5 preliminary approval is “plaintiffs’ expected recovery balanced against the value of the settlement  
6 offer.” *Cotter v. Lyft, Inc.*, 176 F. Supp. 3d 930, 935 (N.D. Cal. 2016) (Chhabria, J.) (internal  
7 quotation marks omitted).

8 There are several ways to assess the reasonableness of the Settlement amount.<sup>15</sup>

9 First, the total exposure, multiplied by the probably of prevailing at each stage, results in  
10 an “expected value” for the case significantly below \$11,625,000. Plaintiffs calculate the  
11 “average” individual Class Member’s damages as follows: a \$68,500 starting salary at PwC, an  
12 unemployment period of 12 weeks following denial of the Class Member’s application to PwC  
13 before getting alternative employment elsewhere (based on Bureau of Labor Statistics (“BLS”)  
14 data in this sector), 9% lower pay in alternative employment, 5% annual salary growth, and either  
15 a three-year time horizon of future underpayment or a 20-year time horizon (the Class Member’s  
16 full career after application to PwC at age of 40 or older). Those assumptions yield damages of  
17 approximately \$35,243 or \$219,659 per person for the three- and 20-year time horizons,  
18 respectively. If one assumes the following shortfall numbers: 216 Associate offers, 150  
19 Experienced Associate offers, and 212 Senior Associate offers, for a total of 578 offers, those  
20 individual damages figures translate to \$20.4 million and \$126.9 million, respectively.<sup>16</sup>

21  
22  
23 <sup>15</sup> The following analyses reflect Plaintiffs’ calculations. PwC disagrees with the inputs and  
approach and would contest them in litigation.

24 <sup>16</sup> The shortfall analysis focuses on discrepancies in offer rates, assuming equal qualifications  
25 among the two populations. It is independent of the number of Class Members. The fact that the  
26 number of Class Members exceeds the estimated shortfall would not increase the damages  
calculation, because the damages calculation is capped at the total shortfall (i.e., two applicants  
27 cannot both claim a right to be hired for the same unique position). *See, e.g., United States v. City*  
*of New York*, 681 F. Supp. 2d 274, 291 n.22 (E.D.N.Y. 2010) (“Because there will likely be many  
28 more victims of discrimination than positions that the City would have filled with minority  
candidates, the [settlement] provides each victim with a pro rata share of the monetary value of  
those positions.”).

1 The next step is to adjust these raw exposure figures by the probability of Plaintiffs'  
2 prevailing at each stage of litigation. Assuming a 50% chance of prevailing at Rule 23  
3 certification and FLSA decertification (together), summary judgment, and trial yields an  
4 aggregate 12.5% chance of recovering maximum damages. Applying that chance to the average  
5 of the two damages figures (\$73.6 million) yields an expected value of \$9,200,000. This figure  
6 ignores the chance of losing on appeal, which is a significant concern given recent changes to the  
7 composition of the Ninth Circuit and Supreme Court, taking them in a direction that is more  
8 receptive to arguments by corporate interests. Thus, a \$9.2 million expected value appears  
9 inflated. The \$11.625 million settlement compares quite favorably to that expected value.

10 Second, another way to view the settlement is on a per-person basis. Here, the \$11.625  
11 million settlement equates to approximately \$2,325 per person for an estimated 5,000 Class  
12 Members. This amount compares reasonably to class action settlements resolving claims of  
13 incumbents (as opposed to applicants), where the harm is generally greater, because incumbents  
14 experience ongoing harm month after month, year after year. *See, e.g., Calibuso v. Bank of Am.*  
15 *Corp.*, 299 F.R.D. 359, 368 (E.D.N.Y. 2014) (\$7,800 per class member for female financial  
16 advisors challenging gender discrimination); *Gonzalez v. Abercrombie* No. 03-cv-02817-SI  
17 (N.D. Cal. Apr. 11, 2005), ECF No. 125 (\$2,000 per class member in race discrimination action  
18 for store salespeople and applicants). Here, the approximately 5,000 Class Members are included  
19 without regard to qualifications – e.g., some of the 3,456 Opt-Ins and the additional California  
20 and Michigan Class Members may have GPAs below 3.0, college majors that are not relevant to  
21 accounting and auditing work, and/or inferior work experience.

22 Third, Plaintiffs believe that the settlement is also reasonable compared with *Heath v.*  
23 *Google*, which recently settled in this district for \$11,000,000. 15-cv-1824, ECF No. 438 (N.D.  
24 Cal. Aug. 15, 2019). To make the *Rabin-Heath* comparison apples to apples, four key  
25 adjustments are required: (a) 227 *Heath* opt-ins compared to 578 *Rabin* positions (making *Rabin*  
26 2.55x as big as *Heath*), (b) \$335,000 vs. \$68,500 in salary (0.20x), *Heath v. Google*, No. 5:15-cv-  
27 01824-BLF, ECF No. 346, Ex. 1 at 10–11 n.5, (c) 22 weeks vs. 12 weeks of unemployment per BLS  
28 data (0.55x), and (d) the *Heath* plaintiffs had survived a decertification motion, whereas *Rabin* has

1 not. Holding aside that last qualitative factor, the quantitative factors (2.55x \* 0.20x \* 0.55x)  
2 yield an aggregate factor of 0.28x, which, when applied to the *Heath* settlement, yields an  
3 expected value of \$3,100,000. The proposed settlement far exceeds that.

4 Importantly, Plaintiffs believe that the extensive programmatic relief, while difficult to  
5 value with precision, is extremely valuable. Supposing that the programmatic relief aids 2,500  
6 individuals to the tune of \$1,000 in value for each of the next two years, that benefit to Class  
7 Members equals an additional \$5,000,000 in value, bringing the total value of the settlement to  
8 \$16,625,000.

9 Thus, the \$11,625,000 common fund plus the programmatic relief constitutes fair,  
10 reasonable, and adequate compensation for the Class Members, in light of potential value of their  
11 claims.

### 12 3. The Extent of Discovery Supports Settlement.

13 A settlement requires adequate discovery. The touchstone of the analysis is whether “the  
14 parties have sufficient information to make an informed decision about settlement,” including  
15 formal and informal discovery. *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir.  
16 2000).

17 Here, Plaintiffs have litigated these claims zealously for nearly four years, conducting  
18 robust formal discovery along the way. Specifically, Plaintiffs obtained 1,042,467 pages of  
19 documents from PwC, reviewing and analyzing thousands of corporate documents, training  
20 materials for recruiters and other PwC employees involved in the hiring process, emails, internal  
21 complaints, in addition to extensive data tracking applications to Covered Positions. Sagafi Decl.  
22 ¶ 19. Throughout the Litigation, Plaintiffs’ Counsel interviewed many Class Members and other  
23 witnesses, who provided extensive information regarding PwC’s recruitment and hiring process,  
24 as well as describing their own individual experiences with discrimination. *Id.* ¶ 18. Plaintiffs’  
25 Counsel also worked closely with experts to analyze various types of potential discrimination in  
26 hiring. *Id.* ¶ 20. Thus, the Settlement results from Plaintiffs’ Counsel’s informed judgment about  
27 the strengths and weaknesses of the claims.  
28



1                   **4. Counsel’s Experience And Views Support Approval.**

2                   “Great weight is accorded to the recommendation of counsel, who are most closely  
3 acquainted with the facts of the underlying litigation.” *Nat’l Rural Telecomms. Coop. v.*  
4 *DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004) (internal quotations omitted). “Parties  
5 represented by competent counsel are better positioned than courts to produce a settlement that  
6 fairly reflects each party’s expected outcome in litigation.” *Rodriguez v. W. Publ’g Corp.*, 563  
7 F.3d 948, 967 (9th Cir. 2009) (internal quotations and modifications omitted).

8                   Plaintiffs’ Counsel – Outten & Golden LLP, AARP Foundation Litigation, and the Liu  
9 Law Office – are some of the most experienced and sophisticated plaintiffs’ employment lawyers  
10 in the area of discrimination litigation in the country. Based on their extensive experience and  
11 expertise in this particular area of the law, Plaintiffs’ Counsel believe that the Settlement is fair,  
12 reasonable, and adequate. Plaintiffs’ Counsel specialize in prosecuting nationwide employment  
13 class actions, and over the past many years have successfully—and unsuccessfully—litigated  
14 many such cases, putting them in a strong position to weigh the strengths and weaknesses of  
15 Plaintiffs’ claims. Sagafi Decl. ¶ 32 (describing “Past Distributions” in accordance with Northern  
16 District of California Procedural Guidance for Class Action Settlements).

17                   **5. The Parties Participated in Arms-Length Negotiations Before Two**  
18 **Experienced Neutral Mediators.**

19                   A settlement reached “in good faith after a well-informed arms-length negotiation” is  
20 presumed to be fair. *Fernandez v. Victoria Secret Stores, LLC*, No. 06 Civ. 04149, 2008 WL  
21 8150856, at \*4 (C.D. Cal. July 21, 2008); *Wren v. RGIS Inventory Specialists*, No. 06–cv–05778–  
22 JCS, 2011 WL 1230826, at \*6 (N.D. Cal. Apr. 1, 2011); *see also Tijero v. Aaron Bros., Inc.*, 301  
23 F.R.D. 314, 325 (N.D. Cal. 2013) (Armstrong, J.) (participation in private mediation “support[s]  
24 the conclusion that the settlement process was not collusive”). Here, the settlement easily meets  
25 the rigorous scrutiny required in this District and by *Roes, 1–2*, for both substantive and  
26 procedural reasons. First, the Settlement is substantively strong, providing excellent monetary  
27 relief and robust programmatic relief. Second, the Settlement is procedurally sound, (a) having  
28 been reached after extensive, hard-fought adversarial litigation, with extensive discovery and

1 motion practice, (b) with no parallel litigation that could give rise to reverse auction concerns, and  
2 (c) after over a year of mediated settlement discussions with the oversight of two highly  
3 experienced mediators with particular expertise, collectively, in this industry and in complex  
4 employment discrimination class actions. Sagafi Decl. ¶¶ 22-27.

5 **D. The Proposed Notice Is Clear And Adequate.**

6 The proposed Notice is the “best notice that is practicable under the circumstances.” Fed.  
7 R. Civ. P. 23(c)(2)(B), and is “reasonable,” Fed. R. Civ. P. 23(e)(1). The Notice and Claim Form  
8 are consistent with Northern District of California’s Procedural Guidance for Class Action  
9 Settlements and modern best practices set forth by the Federal Judicial Center (based on examples  
10 at www.fjc.gov). The Notice and Claim Form are easily understandable and include: (1) contact  
11 information for Class Counsel to answer questions; (2) the address for a website, maintained by  
12 the Settlement Administrator that will link to the notice, motions for approval and for attorneys’  
13 fees and any other important documents in the case; and (3) instructions on how to access the case  
14 docket via PACER or in person at any of the Court’s locations. The Notice will state the date of  
15 the final approval hearing and clearly states that the date may change without further notice to the  
16 class. The Notice further advises Class Members that they should check the settlement website or  
17 the Court’s PACER site to confirm that the date has not been changed.

18 The Notice explains that Class Members have 60 days to object or opt out, and 60 days to  
19 submit a Claim Form. Settlement Agreement ¶ 9.2.7.

20 The Claim Form is clear, user-friendly, and focused on a few key relevant facts to which  
21 Class Members have ready access. The Claim Form is helpfully pre-printed with individualized  
22 information in customized paper copies. It will also be available online, so that Class Members  
23 can submit Claim Forms via a web submission form, just like many of them opted into the  
24 litigation. In addition, Plaintiffs’ Counsel will assist the Settlement Administrator in responding  
25 to Class Member questions, helping them file Claim Forms and navigate the process generally.

26 **V. A FINAL APPROVAL HEARING SHOULD BE SCHEDULED.**

27 Plaintiffs, in consultation with PwC, propose the following schedule for finalizing and  
28 implementing the Settlement:

Event	Proposed Date
<b>Preliminary Approval Hearing</b>	<b>March 11, 2020</b>
Court enters Preliminary Approval Order*	March 18, 2020
PwC provides class list data to Settlement Administrator	April 8, 2020
Settlement Administrator disseminates Notice	May 7, 2020
Settlement Administrator sends Reminder notices	June 8, 2020
Plaintiffs file Fee and Service Award motions	June 22, 2020
Deadline for Class Members to file Claim Forms, opt out, and/or object	July 6, 2020
PwC deadline to exercise void option	July 23, 2020
Plaintiffs file Final Approval motion	July 27, 2020
<b>Final Approval Hearing</b>	<b>August 10, 2020</b>
Final Approval Order*	August 17, 2020
Effective Date (assuming no appeals)*	September 16, 2020
PwC funds Settlement	September 30, 2020
Settlement Administrator mails checks to Class	October 15, 2020

\* Assumed date for purposes of calculating subsequent dates.

## VI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court: (1) conditionally certify the settlement classes; (2) preliminarily approve the Settlement pursuant to Fed. R. Civ. P. 23(c) and (e) and section 216(b) of the FLSA; (3) appoint Plaintiffs as the Class Representatives, their counsel as Class Counsel, and JND Legal Administration as Settlement Administrator; (4) set the deadlines for filing claims, written exclusions, or objections to the Settlement; (5) approve the forms of notice to the class of the settlement and the Claim Form; and (6) schedule a hearing on the final approval of the Settlement.

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Dated: March 3, 2020

Respectfully submitted,

By: /s/ Jahan C. Sagafi

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