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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 DAVID K. KRIES, and GARY  
12 MONDESIR, on behalf of themselves and  
13 all other employees similarly situated,

14 Plaintiffs,

15 v.

16 CITY OF SAN DIEGO; and DOES 1  
17 through 10, inclusive,

18 Defendants.  
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20 CANDACE MITCHELL, et al., on behalf  
21 of themselves and all other employees  
22 similarly situated,

23 Plaintiffs,

24 v.

25 CITY OF SAN DIEGO,

26 Defendant.  
27

Case No.: 17-cv-1464-GPC-BGS

**ORDER GRANTING MOTION FOR  
APPROVAL OF SETTLEMENT**

**[ECF NO. 571]**

Case No. 17-cv-2014-GPC-BGS

(Consolidated with 17-cv-1464-GPC-  
BGS)

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3 ALBERTO ARELLANO, MAICO  
4 ALEJO, and GARY OLLISON, on behalf  
5 of themselves and all other employees  
6 similarly situated,

7 Plaintiffs,

8 vs.

9 CITY OF SAN DIEGO,

10 Defendant.  
11

Case No. 18-cv-0229-GPC-BGS  
(Consolidated with 17-cv-2014-GPC-  
BGS)

12  
13 Before the Court is the Joint Motion to Approve the Settlement Agreement  
14 between Plaintiffs in the above-captioned consolidated cases, *Kries, et al. v. City of San*  
15 *Diego* (“*Kries*”), *Mitchell, et al. v. City of San Diego* (“*Mitchell*”), and *Arellano, et al. v*  
16 *City of San Diego* (“*Arellano*”) (collectively, “the Actions”) and Defendant City of San  
17 Diego (“Defendant” or “City”) (collectively “the Parties”). ECF No. 571. Based on the  
18 papers and pleadings submitted in support of Plaintiffs' motion, and the remaining papers,  
19 pleadings and Orders in this action, and for good cause shown, the Court GRANTS the  
20 Joint Motion to Approve the Settlement Agreement in all respects.

21 **I. BACKGROUND**

22 This case involves a wage-and-hour class action, wherein Plaintiffs are non-exempt  
23 City employees who argue that they are entitled to overtime compensation under the Fair  
24 Labor Standards Act (“FLSA”), 29 U.S.C. § 201, *et seq.* and seek unpaid overtime  
25 compensation, declaratory relief, liquidated damages, interest, and attorneys’ fees and  
26 costs on the basis of the Ninth Circuit decision *Flores v. City of San Gabriel*, 824 F.3d  
27 890, 895 (9th Cir. 2016). *Flores* held that employees who did not spend the whole of

1 their allocated flex benefit plan dollars received the unused portions as cash, sometimes  
2 referred to as “cash-in-lieu” (“CIL”) payments, and that the employee’s CIL payments  
3 must be included in the calculation of the regular rate of pay for overtime payments under  
4 FLSA. *Flores*, 824 F.3d at 901-902. *Flores* additionally held that the total value of flex  
5 benefit dollars provided by the flexible benefits plan (“FBP”) became eligible for  
6 inclusion in the regular rate of pay when calculating overtime payments under FLSA. *Id.*  
7 at 903.

8 Here, Plaintiffs allege that the City underpaid overtime wages by excluding from  
9 the regular rate of pay: (1) CIL payouts under the City’s FBP (“CIL claim”), and (2) the  
10 full value of the Plaintiffs’ FBP flex dollars or credits (“Total FBP claim”). Plaintiffs  
11 also allege that the City violated FLSA by: (1) failing to “cash out” compensatory time  
12 off accrued under FLSA using a regular rate of pay that included CIL and Full FBP  
13 Credits, and (2) the City used a divisor and multiplier methodology which underpaid  
14 FLSA overtime by failing to allocate FBP Credits to the regular rate earned during a  
15 standard 40-hour, non-overtime workweek.

16 The *Kries* action was filed on July 19, 2017, the *Mitchell* action was filed on  
17 September 29, 2017, and the *Arellano* action was filed on January 31, 2018. The *Kries*  
18 plaintiffs filed their action on behalf of themselves and similarly situated former and  
19 current police officers employed by the City. ECF No. 571 at 7. The *Mitchell* plaintiffs  
20 filed their action on behalf of themselves and all similarly situated former and current  
21 full-time City employees. *Id.* The *Arellano* plaintiffs filed their action on behalf of  
22 themselves and similarly situated former and current City employees holding  
23 maintenance, labor, skilled trades and equipment operator positions. *Id.*

24 In *Kries*, the Court denied the Defendants’ motion to dismiss the First Amended  
25 Complaint (ECF No. 69) on July 18, 2018. ECF No. 143. On October 23, 2018, the  
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1 *Kries* plaintiffs filed the operative Second Amended Complaint. ECF No. 161. On July  
2 10, 2019, the Court consolidated the Actions. ECF No. 547.

3 The Parties agree that a total of 2,537 Plaintiffs filed timely consents to join the  
4 Actions: 1,153 joined the *Mitchell* case; 897 joined the *Arellano* case; and 487 joined the  
5 *Kries* case. *Id.* at 8.<sup>1</sup>

6 The Parties now move for the Court to approve the Settlement Agreement, which  
7 provides that the City will pay a total amount of no more than \$6,199,997.98, and that  
8 this amount shall include all of Plaintiffs’ damages to settle all of Plaintiffs’ FBP-related  
9 FLSA claims raised in the Action. ECF No. 571-2 at 6. The Parties agree that half of  
10 this total amount represents the agreed-upon overtime backpay arising from Plaintiffs’  
11 claims, and the other half represents the total amount of liquidated damages arising from  
12 Plaintiffs’ claims. *Id.*

## 13 **II. LEGAL STANDARD**

14 FLSA was enacted to protect covered workers from substandard wages and  
15 oppressive working hours. *See Barrentine v. Arkansas–Best Freight System, Inc.*, 450  
16 U.S. 728, 739 (1981); 29 U.S.C. § 202(a) (characterizing substandard wages as a labor  
17 condition that undermines “the maintenance of the minimum standard of living necessary  
18 for health, efficiency, and general well-being of workers”). “FLSA places strict limits on  
19 an employee’s ability to waive claims for unpaid wages or overtime . . . for fear that  
20 employers may coerce employees into settlement and waiver.” *Lopez v. Nights of*  
21 *Cabiria, LLC*, 96 F.Supp.3d 170, 175 (S.D.N.Y.2015) (internal quotation marks and  
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23 <sup>1</sup> Parties’ counsel learned in April 2020 that 35 additional putative plaintiffs employed in lifeguard job  
24 classifications were inadvertently omitted from the City’s master final mailing list of individuals who  
25 were to receive notice of eligibility to join the *Mitchell* case due to a formatting error in the spreadsheet  
26 listing their names. Adema Decl. ¶ 9. The Parties agreed to resolve this omission by granting the 35  
27 omitted lifeguards a new opportunity to consent to join the *Mitchell* action and to receive damages on  
28 the same terms described in the Settlement Agreement, using a retroactive opt-in date for their claims.  
*Id.* ¶ 10.

1 citation omitted). Accordingly, claims for unpaid wages under FLSA may only be  
2 waived or otherwise settled if settlement is supervised by the Secretary of Labor or  
3 approved by a district court. *See Lynn's Food Stores, Inc. v. United States ex rel. U.S.*  
4 *Dept. of Labor, Emp't Standards Admin., Wage & Hour Div.*, 679 F.2d 1350, 1352–53  
5 (11th Cir.1982); *Meza v. 317 Amsterdam Corp.*, 14–CV–9007 (VSB), 2015 WL  
6 9161791, \*1 (S.D.N.Y. Dec. 14, 2015) (“Parties may not privately settle FLSA claims  
7 with prejudice absent the approval of the district court or the Department of Labor.”)  
8 (citation omitted).

9 In reviewing a FLSA settlement, a district court must determine whether the  
10 settlement represents a “fair and reasonable resolution of a bona fide dispute.” *Lynn's*  
11 *Food Stores*, 679 F.2d at 1355. A bona fide dispute exists when there are legitimate  
12 questions about “the existence and extent of Defendant's FLSA liability.” *Ambrosino v.*  
13 *Home Depot. U.S.A., Inc.*, 2014 WL 1671489 (S.D. Cal. Apr. 28, 2014). There must be  
14 “some doubt . . . that the plaintiffs would succeed on the merits through litigation of their  
15 [FLSA] claims.” *Selk v. Pioneers Mem'l Healthcare Dist.*, 159 F. Supp. 3d 1164, 1172  
16 (S.D. Cal. 2016).

17 After a district court is satisfied that a bona fide dispute exists, it must then  
18 determine whether the settlement is fair and reasonable. *Id.* To determine this, courts in  
19 this circuit look to the totality of the circumstances, balancing such factors as: “(1) the  
20 plaintiff's range of possible recovery; (2) the stage of proceedings and amount of  
21 discovery completed; (3) the seriousness of the litigation risks faced by the parties; (4)  
22 the scope of any release provision in the settlement agreement; (5) the experience and  
23 views of counsel and the opinion of participating plaintiffs; and (6) the possibility of  
24 fraud or collusion.” *Id.* at 1173 (S.D. Cal. 2016) (collecting cases). A court will not  
25 approve a settlement of an action in which parties attempt to settle for less than the  
26 FLSA-guaranteed amount because it would shield employers from the full cost of  
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1 complying with the statute. *Id.* at 1172. The Court addresses each of these factors in  
2 turn.

### 3 **III. DISCUSSION**

#### 4 **A. Bona Fide Dispute**

5 The Court finds that this case reflects a bona fide dispute between the parties over  
6 potential liability under the FLSA. Although *Flores* established that the City owe some  
7 amount of retroactive underpaid overtime to the Plaintiffs, the amount of such payment  
8 owed is subject to reasonable dispute. Specifically, the Parties point to five disputes: (1)  
9 whether the City is liable on the Total FBP claim for each of the fiscal years covered by  
10 the statute of limitations or for one or all of the three fiscal years included in the  
11 Settlement Agreement (ECF No. 571 at 19); (2) the extent to which *Flores* applies to the  
12 amount of CTO that Plaintiffs accrued and cashed out (ECF No. 571 at 20); (3) whether  
13 the City can establish “subjective and objective good faith” in order to avoid paying  
14 liquidated damages by showing that had no knowledge of any potential FLSA violation  
15 prior to the *Flores* decision (ECF No 571 at 20); (4) whether applicable statute of  
16 limitations is the baseline two-year statute of limitations under FLSA, or an extended  
17 three-year statute of limitations on the basis that the FLSA violation was “willful” (ECF  
18 No. 571 at 22); and (5) what methodology should be applied to calculate the amount of  
19 any underpayment. ECF No. 571 at 23-24. The parties describe the dispute over  
20 methodology to be the “largest settlement variable.” *Id.* at 17.

21 These disputes raise legitimate question over whether and the extent to which the  
22 City is liable under FLSA. The Parties have both shown legitimate arguments deserving  
23 consideration and in light of these competing views, the Court finds that there is a bona  
24 fide dispute between the Parties.

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1           **B. Fair and Reasonable**

2           Parties contend that the proposed Settlement Agreement is a fair and reasonable  
3 resolution of the parties’ disputes and in furtherance of the purposes of the FLSA. After  
4 considering the six factors outlined above, the Court finds that the Settlement Agreement  
5 is fair and reasonable under FLSA.

6                   **1. Plaintiff’s Range of Possible Recovery**

7           In comparing the amount proposed in the settlement with the amount that plaintiffs  
8 could have obtained at trial, the court must be satisfied that the amount left on the  
9 settlement table is fair and reasonable under the circumstances presented. *Selk*, 159 F.  
10 Supp. 3d at 1174. The Court must consider whether the range of potential recovery  
11 bears some reasonable relationship to the true settlement value of the claims. *Id.* “[A]  
12 proposed settlement may be acceptable even though it amounts to only a fraction of the  
13 potential recovery that might be available to the class members at trial.” *Nat’l Rural*  
14 *Telecommunications Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004).

15           Here, the range of Plaintiffs’ potential recovery varies widely depending on how  
16 the bona fide disputes between the Parties are resolved. ECF No. 571 at 28. Each  
17 Plaintiff’s actual damages were calculated by the City’s retained forensic expert and the  
18 Parties agree that these calculations were done accurately. *Id.* at 27-28. However,  
19 depending on whether the bona fide disputes are resolved in Plaintiffs’ or Defendant’s  
20 favor, Plaintiffs’ total recovery can range widely.

21           If Plaintiffs prevail on their position that the City is liable for backpay on the CIL  
22 and CTO claims based on a three-year statute of limitations, but lose on the Total FBP  
23 claims, the total FLSA backpay for all 2,537 Plaintiffs based on the City's methodology is  
24 \$354,933.46. ECF No. 571-1 at 1, Declaration of Alison P. Adema (“Adema Decl.”) ¶  
25 16. If Plaintiffs prevail on their liquidated damages claim, Plaintiffs’ damages would  
26 increase to \$709,866.92. *Id.* If Plaintiffs prevail on their position that the City is liable  
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1 for backpay on all of their claims – CIL, Total FBP and CTO – based on a three-year  
2 statute of limitations, the total FLSA backpay for all 2,537 Plaintiffs based on the City’s  
3 methodology is \$1,634,005.90. *Id.* If Plaintiffs further prevail on their position that the  
4 City is liable for liquidated damages on these claims, Plaintiffs damages increase to  
5 \$3,268,011.80. *Id.*

6 These recoveries assume that a statute of limitations period of three years applies,  
7 and that Plaintiffs would additionally prevail in proving that the City’s FBP did not  
8 qualify as “bona fide” for the fiscal years at issue – 2017, 2018, and 2019. If the City  
9 were to prevail on its defenses to this claim for one or more fiscal years, however,  
10 Plaintiffs' recovery would be reduced proportionately. *Id.*

11 Under the Settlement Agreement, the City has agreed to pay a total sum of  
12 \$6,199,997.98, which represents approximately twice the maximum value of Plaintiffs’  
13 damages if the City’s methodology is accepted as the proper method. *Id.* at 29. The  
14 Parties note that although acceptance of the Settlement Agreement may risk decreasing  
15 the potential award for each Plaintiff, as compared to if they were successful in litigating  
16 all their claims, but that this assumption of this risk is warranted and such settlement is  
17 favored since litigation may take many more months or years, including any potential  
18 appeals. *Id.* Given the wide range of outcomes, the Court agrees with the parties’  
19 contention that there is significant risk presented by continued litigation.

## 20 **2. Stage of Proceedings and Amount of Discovery Completed**

21 The Court assesses the stage of proceedings and the amount of discovery  
22 completed to ensure the parties have an adequate appreciation of the merits of the case  
23 before reaching a settlement. *Selk*, 159 F.Supp.3d at 1177 (citing *Ontiveros v. Zamora*,  
24 303 F.R.D. 356, 371 (E.D.Cal.2014)). The Parties state that over the course of the two  
25 years of litigation they have engaged in sufficient informal and formal discovery –  
26 including the City’s provision of information regarding FBP data, the amounts of FBP  
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1 credits, actual payroll and time records. ECF No. 571 at 15. Parties also state that they  
2 have conferred multiple times with the City’s retained expert on his methods, work  
3 product, and calculations, and requested changes and corrections in order to arrive at a set  
4 of calculations which all Parties now believe in good faith represent a correct  
5 determination of each Plaintiff’s damages. *Id.*

6 The City has responded to Plaintiffs’ written discovery requests; Plaintiffs have  
7 deposed City’s “most knowledgeable” persons; the City has produced FBP data to show  
8 how and in what amounts FBP credits under the City’s plan were allocated to cash, other  
9 forms of cash-in-lieu, and to insurance options; and finally, the City produced actual  
10 payroll and time records for all Plaintiffs to the City’s retained forensic expert so that he  
11 could determine damages. ECF No. 571 at 14. Additionally, the Parties’ counsel have  
12 conferred several times with the City’s retained expert in order to ascertain his methods  
13 and examine his work product, and both have requested changes and corrections in order  
14 to arrive at a set of calculations that both Parties believe in good faith represent a correct  
15 determination of Plaintiffs’ potential damages. *Id.* at 15. Accordingly, the Court finds  
16 that the parties have engaged in meaningful discovery and this factor favors approval of  
17 the Settlement Agreement. *Ching v. Siemens Industry, Inc.*, No. 11–cv–04838–MEJ,  
18 2014 WL 2926210, \*5 (N.D. Cal. Jun. 27, 2014) (extent of discovery weighed in favor of  
19 approving a settlement where class counsel “conducted interviews, propounded extensive  
20 written discovery, discussed the case with opposing counsel, analyzed thousands of pages  
21 of documents, deposed Defendants’ person most knowledgeable, analyzed damages,  
22 reviewed time and pay records and policy documents, and collected evidence”).

### 23 **3. Seriousness of the Litigation Risks**

24  
25 The seriousness of the litigation risks also weighs in favor of approval of the  
26 Settlement Agreement. Settlement is favored where “there is a significant risk that  
27 litigation might result in a lesser recover[y] for the class or no recovery at all.”

1 *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 255 (N.D. Cal. 2015). If a  
2 settlement in an FLSA lawsuit reflects a reasonable compromise over issues that are  
3 actually in dispute, the “court may approve the settlement ‘in order to promote the policy  
4 of encouraging settlement of litigation.’ ” *Selk*, 159 F.Supp.3d at 1173; *Nen Thio v.*  
5 *Genji, LLC*, 14 F. Supp. 3d 1324, 1333 (N.D. Cal. 2014); *Lynn’s Food Stores*, 679 F.2d  
6 at 1353 n.8 (requiring “settlement of a bona fide dispute between the Parties with respect  
7 to coverage or amount due under the [FLSA]”).

8 Parties state that the Settlement Agreement provides Plaintiffs with substantial  
9 relief while continued litigation could harm Plaintiffs' interests by jeopardizing the relief  
10 which will be secured by settlement. Specifically, the Parties point to five bona fide  
11 disputes which persist and could jeopardize the recovery for Plaintiffs in the event the  
12 litigation were to continue: (1) whether the City had underpaid FLSA overtime by  
13 excluding the cash-in-lieu portion of its FBP only or by excluding the full or total FBP  
14 amount (ECF No. 571 at 18-19); (2) whether the City had underpaid compensatory time  
15 off (“CTO”) by excluding FBP compensation when calculating permissible cash-outs  
16 (ECF No. 571 at 19-20); (3) whether the City should pay liquidated damages in addition  
17 to actual wage damages (ECF No. 571 at 20-22); (4) whether applicable statute of  
18 limitations is the baseline two-year statute of limitations under FLSA, or an extended  
19 three-year statute of limitations on the basis that the FLSA violation was “willful” (ECF  
20 No. 571 at 22); and (5) what methodology should be applied to calculate the amount of  
21 any underpayment. ECF No. 571 at 23-24. The parties describe the dispute over  
22 methodology to be the “largest settlement variable.” *Id.* at 17.

23 The Parties have ultimately determined, based on the risks associated the  
24 aforementioned five bona fide disputes, that the Total Settlement Amount should equal a  
25 sum of \$6,199,997.98. The damage calculations for the CIL claim and the Total FBP  
26 claim were premised on the alleged underpaid overtime and an equal amount of  
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1 liquidated damages. The CIL claim used a three-year statute of limitations through June  
2 30, 2019, from each Plaintiff's opt-in date, plus the Court-ordered five-month tolling  
3 period where applicable, reduced by application of the offsets and credits available to the  
4 City under FLSA because the City paid overtime to employees in compliance with  
5 Personnel Regulations and labor agreements which exceeded what the FLSA requires.  
6 *Id.* at 26. The Total FBP claim used a two-year statute of limitations based on each  
7 Plaintiff's opt-in date through June 30, 2019, plus the Court-ordered five-month tolling  
8 period where applicable, but in any event not before July 1, 2016 and these calculations  
9 cover three fiscal years, from 2017 through 2019. *Id.* at 26. The amount of each  
10 Plaintiff's damages was reduced by application of the offsets and credits available to the  
11 City under FLSA because the City began including the CIL portion of an employee's  
12 Total FBP on July 1, 2017, and because the City paid overtime to employees in  
13 compliance with Personnel Regulations and labor agreements which exceeded what  
14 FLSA required. *Id.* at 27.

15 In light of the above-referenced uncertainty, the Court find that the parties would  
16 face substantial litigation risk were this action to continue. Further, "[t]he expense and  
17 possible duration of the litigation should be considered in evaluating the reasonableness  
18 of [a] settlement." *Glass v. UBS Fin. Servs., Inc.*, No. C-06-4068 MMC, 2007 WL  
19 221862, at \*4 (N.D. Cal. Jan. 26, 2007), *aff'd*, 331 F. App'x 452 (9th Cir. 2009).  
20 Accordingly, this factor supports approval of the Settlement Agreement.

#### 21 **4. Scope of Release Provision in the Settlement Agreement**

22 Courts review the scope of any release provision in a FLSA settlement to ensure  
23 that class members are not pressured into forfeiting claims, or waiving rights, unrelated to  
24 the litigation, and are especially skeptical of release provisions that require employees to  
25 forfeit claims that are designed to advance public values. *Selk*, 159 F.Supp.3d at 1178  
26 (citing *Luo v. Zynga, Inc.*, No. 13-cv-00186 NC, 2014 WL 457742 at \*3 (N.D. Cal. Jan.  
27

1 31, 2014)). The underlying concern is that an overly wide-reaching release of claims  
2 may evince an attempt by an employer to use employee wages as a bargaining chip to  
3 extract valuable concessions from the employees. *Id.* A FLSA settlement – especially  
4 when members opt in in order to receive only unpaid wages and related damages –  
5 should generally be limited to the specific claims at issue in the lawsuit. *Id.* Here, the  
6 applicable release provision in the Settlement Agreement provides:

7       Upon final approval by the Court of the AGREEMENT, PLAINTIFFS agree to  
8 fully discharge any and all claims, charges, grievances, complaints, allegations,  
9 and causes of action related to or arising out of the allegations made in the  
10 ACTIONS related to the treatment of FBP remuneration, whether asserted or  
11 unasserted, through the date the Court approves the AGREEMENT, and that this  
12 settlement includes all claims made in the ACTIONS for unpaid overtime based on  
13 the regular rate of pay, the payment of compensatory time off at the regular rate of  
14 pay, the methodology the City used to calculate FLSA overtime pay on FBP  
15 credits, liquidated damages, and interest ("RELEASED CLAIMS"), and  
16 PLAINTIFFS fully, finally and completely release, waive, and discharge CITY,  
17 and its elected and administrative officers, agents, employees, successors and  
18 assigns from FLSA claims related to the treatment of FBP remuneration, whether  
19 asserted or unasserted, through the date the Court approves this AGREEMENT.

20       PLAINTIFFS acknowledge and understand that PLAINTIFFS have the right to  
21 pursue any FLSA claims related to the treatment of FBP remuneration that  
22 PLAINTIFFS might have based on events occurring or payments made after the  
23 date the COURT approves this AGREEMENT.

24 ECF No. 571-2 at 10. The above language will be distributed to all Plaintiffs as an  
25 Acknowledgment and Acceptance of Settlement and Release of Claims Form which  
26 contains the following parallel release language:

27       I understand and agree that my acceptance of the Agreement constitutes a full and  
28 complete settlement of all my FLSA claims related to the treatment of FBP  
remuneration, whether asserted or un-asserted, through the date of Court approval  
of the Settlement Agreement in this case, and that this settlement includes all  
claims made in the Action for unpaid overtime based on the regular rate of pay, the

1 payment of compensatory time off at the regular rate of pay, the methodology the  
2 City used to calculate FLSA overtime pay on FBP credits, liquidated damages, and  
3 interest, and I fully, finally and completely release, waive, and discharge the City  
4 of San Diego, and its elected and administrative officers, agents, employees,  
5 successors and assigns from FLSA claims related to the treatment of FBP  
6 remuneration, whether asserted or un-asserted, through the date of Court approval  
7 of the Settlement Agreement. I understand that the City will pay reasonable  
8 attorneys' fees and costs which my attorneys incurred in this action based on an  
9 award subsequently approved by the Court and that this award will be in addition  
10 to the amounts paid to me and not deducted from those amounts. I further agree to  
11 dismiss, with prejudice, my claims in the Action. I understand and acknowledge  
12 that the City expressly denies liability for any and all claims or demands and that  
13 the Agreement reflects a compromise settlement of disputed claim.

14 ECF No. 571-2 at 126. To receive payment under the Settlement, Plaintiffs will be  
15 required to execute and return the Acknowledgment and Acceptance of Settlement and  
16 Release of Claims Form.

17 The release form provides that Plaintiffs are only releasing their FLSA overtime  
18 claims related to the treatment of FBP remuneration through the date of Court approval of  
19 this Settlement Agreement and they are specifically advised of their "right to pursue any  
20 FLSA claims related to the treatment of FBP remuneration that [Plaintiff] might have  
21 based on events occurring or payments made after the date of Court approval of the  
22 Settlement Agreement. ECF No. 571 at 16. Plaintiffs' counsel state that they are "fully  
23 satisfied" that the agreed-upon language is narrowly tailored to bind all Plaintiffs only as  
24 to their specific FLSA claims related to FBP remuneration, whether asserted or  
25 unasserted. The Court agrees and finds that the Parties have agreed on a narrowly-  
26 tailored release that meets the applicable standards under the FLSA.

## 27 **5. Experience and Views of Counsel**

28 In determining whether a settlement is fair and reasonable, "[t]he opinions of  
counsel should be given considerable weight both because of counsel's familiarity with

1 th[e] litigation and previous experience with cases.” *Larsen v. Trader Joe’s Co.*, 2014  
2 WL 3404531, \*5 (N.D. Cal. Jul. 11, 2014).

3 As an initial matter, both Parties’ counsel have years of experience advocating for  
4 employees and employers in wage and hour cases. *Id.* at 29-30. Plaintiffs’ counsel assert  
5 that the terms of the Settlement Agreement are “fair, just, and reasonable” sine the  
6 settlement amount for each Plaintiff represents the full potential value of their claim  
7 assuming Plaintiffs prevail on all disputed issues except methodology and, as to  
8 methodology, the City is adding to each Plaintiff’s damages amount in a manner that  
9 Plaintiffs’ counsel considers to be fair and reasonable. *Id.* at 29. Although both Parties  
10 disagree as to the amounts that Plaintiffs are owed based on the bona fide dispute, the  
11 Parties agree that their decision to settle according to the terms of the Settlement  
12 Agreement is prudent in order to achieve finality and certainty. *Id.* at 30. The opinions  
13 of the Parties’ counsel should be given considerable weight both because of counsel's  
14 familiarity with this litigation and previous experience with cases. Therefore this factor  
15 weighs in favor of approval.

## 16 **6. Possibility of Fraud or Collusion**

17 The Court finds no evidence that the Settlement resulted from, or was influenced  
18 by, fraud or collusion. “A key factor supporting this finding is that the amount of the  
19 individual settlement payments to be received by opt-in members is based on an analysis  
20 of employee time records.” *Selk*, 159 F. Supp. 3d at 1179. “This approach guards  
21 against the arbitrariness that might suggest collusion.” *Id.* Here, the Parties’ Settlement  
22 does not involve a lump sum of money to be divided on an arbitrary basis by all plaintiffs  
23 but instead, the size of each Plaintiff’s recovery has been calculated based on their time  
24 records and payroll data; this takes into account how much FLSA-eligible overtime each  
25 plaintiff worked, the amount of total FBP credits the Plaintiff had available, the  
26 Plaintiff’s opt-in date, and the effect of permissible offsets and credits lawfully available  
27

1 to the City. ECF No. 571 at 12. Additionally, the record in this case shows that the  
2 Settlement was the result of arms-length negotiations: the Parties' counsel have had  
3 conducted two in-person settlement conferences with Magistrate Bernard Skomal in  
4 December 2018 and again in May 2019, in addition to numerous telephonic conferences  
5 with Magistrate Bernard Skomal and several in-person and telephone conferences and  
6 among the Parties' counsel. ECF No. 571-1 ¶ 11. Accordingly, the Court finds that there  
7 is no evidence that fraud or collusion exists.

#### 8 **IV. CONCLUSION AND ORDER**

9 The FLSA was designed “to extend the frontiers of social progress by insuring to  
10 all our able-bodied men and women a fair day’s pay for a fair day's work.” *A.H. Phillips,*  
11 *Inc. v. Walling*, 324 U.S. 490, 493 (1945). As such, the substantive labor rights provided  
12 for in the statute – including the minimum wage and maximum hour provisions – are  
13 afforded exceptionally strong protection. *Selk*, 159 F. Supp. 3d at 1181. When private  
14 parties submit a settlement purporting to resolve claims brought under FLSA, courts must  
15 scrutinize the settlement to ensure it represents a fair and reasonable resolution of a bona  
16 fide dispute rather than a “mere waiver of statutory rights brought about by an employer's  
17 overreaching.” *Lynn 's*, 679 F.2d at 1354. Here, after evaluating the Settlement  
18 Agreement under the totality of circumstances described above, the Court finds it to be a  
19 fair and reasonable resolution of a bona fide dispute over FLSA provisions. Accordingly,  
20 the Court GRANTS Plaintiff's motion for approval of settlement.

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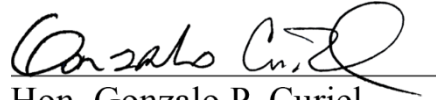




1 Any reply must be filed on or before November 12, 2020. A hearing on this  
2 matter is scheduled for **November 20, 2020** at 1:30 PM in Courtroom 2D;  
3 6. Judgment is hereby entered on the terms set forth above.  
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5 **IT IS SO ORDERED.**

6 Dated: July 2, 2020

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8 Hon. Gonzalo P. Curiel  
9 United States District Judge  
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