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17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**
19 **SAN JOSE DIVISION**

20 ABDUL NEVAREZ and PRISCILLA NEVAREZ,
21 on behalf of themselves and all others similarly
situated, and SEBASTIAN DEFRANCESCO,

22 Plaintiffs,

23 vs.

24 FORTY NINERS FOOTBALL COMPANY, LLC,
25 a Delaware limited liability company, et al.,

26 Defendants.
27
28

CLASS ACTION

Case No.: 5:16-cv-07013-LHK (SVK)

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: July 16, 2020
Time: 1:30 p.m.
Place: Courtroom 8
Before: Hon. Lucy H. Koh

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1 The proposed Settlement also provides a \$24 million class damages fund with no reversion to
 2 Defendants. Class Members who make valid and timely claims on the fund will receive a minimum of
 3 \$4,000 for each visit to Levi’s Stadium in which they encountered an access barrier that caused them
 4 difficulty, discomfort or embarrassment within the meaning of California Civil Code Sections 55.56, *et*
 5 *seq.*, up to a maximum of \$80,000, depending upon the number of eligible claims filed. This is the
 6 largest class damages settlement ever achieved in a case challenging physical access to a place of
 7 public accommodation. The Settlement contains all agreements between Plaintiffs and Defendants.

8 This Court preliminarily approved the proposed Settlement on March 9, 2020. Since then, the
 9 Parties have caused Notice of the Settlement to issue in conformance with this Court’s Order Granting
 10 Preliminary Approval. *See* Declaration of Guy B. Wallace in Support of Motion for Final Approval of
 11 Class Action Settlement (“Wallace Decl.”) ¶¶ 4-6; Declaration of Stuart Kirkpatrick in Support of
 12 Motion for Final Approval of Class Action Settlement (“Kirkpatrick Decl.”) ¶¶ 3-5; Declaration of
 13 Edward Dattilo Re: Notice Procedures (“Dattilo Decl.”) ¶¶ 4-6; Declaration of Brian P. Maschler in
 14 Support of Motion for Final Approval of Class Action Settlement (“Maschler Decl.”) ¶¶ 3-5;
 15 Declaration of Maria Lampasona in Support of Final Approval of Class Action Settlement
 16 (“Lampasona Decl.”) ¶¶ 3-5. The deadline for objecting to the proposed Settlement or opting out of
 17 the damages class is June 28, 2020. As of the date of this submission, there are no objections or opt-
 18 outs. Dattilo Decl. ¶ 12.

19 The proposed Settlement is fair, adequate, and reasonable, and satisfies all of the criteria for
 20 final approval under Rule 23 of the Federal Rules of Civil Procedure. Accordingly, Plaintiffs ask that
 21 the Court: (i) grant final approval of the Settlement; and (ii) retain jurisdiction over the litigation and
 22 the Parties throughout the term of the Settlement Agreement.¹

23 **II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND**

24 **A. The Complaint**

25 Plaintiffs Abdul and Priscilla Nevarez filed this class action on December 7, 2016, asserting
 26

27 ¹ By separate motions filed concurrently herewith, Plaintiffs also ask the Court to (i) grant service
 28 awards of \$5,000 to each of the three Named Plaintiffs and Class Representatives; and (ii) award Class
 Counsel reasonable attorneys’ fees, costs, and litigation expenses in the amount of \$13,457,152.40.

1 claims for both injunctive relief and damages against the Forty Niners Football Company LLC, the
 2 City of Santa Clara (“the City”), the Santa Clara Stadium Authority (the “Stadium Authority”) and
 3 Ticketmaster Entertainment, Inc. (“Ticketmaster”) based on alleged violations of the ADA, the
 4 Rehabilitation Act of 1973, California Government Code Section 11135, the California Disabled
 5 Persons Act (California Civil Code Sections 54, *et seq.*) and the California Unruh Act. *See* Compl.
 6 (ECF No. 1). Thereafter, the Complaint was amended to add the Forty Niners Stadium Management
 7 Company LLC as a Defendant (ECF No. 9).²

8 On April 13, 2017, pursuant to Stipulation of the Parties approved by this Court, Plaintiffs filed
 9 their Second Amended Complaint limiting their claims to the alleged violation of Titles II and III of
 10 the ADA and California’s Unruh Act, and adding Sebastian DeFrancesco as a Plaintiff. (ECF No. 47,
 11 50). On August 1, 2017, the Court dismissed the Named Plaintiffs’ claims for individual damages
 12 against the City and Stadium Authority except for Plaintiffs Abdul and Priscilla Nevarezes’ claims for
 13 damages based on their visit to the Stadium on April 2, 2016. On August 15, 2017 the Court dismissed
 14 without prejudice Plaintiffs’ claims against Ticketmaster, finding that those claims were subject to
 15 mandatory arbitration. (ECF No. 85).

16 Plaintiffs filed a Third Amended Complaint on August 8, 2017 (ECF No. 78) and the operative
 17 Fourth Amended Complaint on July 27, 2018 (ECF No. 195). The Complaint includes and
 18 incorporates exhibits identifying the alleged disability access barriers in the Stadium, as well as in the
 19 Stadium’s main parking lot and the adjacent pedestrian right of way. (ECF No. 195-1 to 195-4). It
 20 also maintains class claims against the Forty Niners Defendants for Unruh Act damages. *Id.*

21 **B. Preliminary Approval**

22 On March 9, 2020, this Court granted preliminary approval of the proposed Settlement. *See*
 23 Order (1) Granting Preliminary Approval of Class Action Settlement; (2) Modifying Damages Class
 24 Definition; (3) Appointing Additional Injunctive Relief Class Representative; (4) Directing Notice to
 25 The Classes; and (5) Setting Date for Fairness Hearing (ECF No. 392) (“Preliminary Approval
 26 Order”). In its Preliminary Approval Order, the Court made the following modification to the
 27 _____

28 ² A full description of the facts and history are set forth in the Motion for Reasonable Attorneys’ Fees,
 Costs and Expenses filed concurrently with this Motion.

1 definitions of the three Plaintiff classes:

2 **Injunctive Relief Class:** 1. All persons with mobility disabilities who use
3 wheelchairs, scooters, or other mobility aids who will attempt to purchase
4 accessible seating for a public event at Levi's Stadium and who will be
5 denied equal access to the Stadium's facilities, services, accessible
6 seating, parking, amenities, and privileges, including ticketing, from
7 December 7, 2013 through the date of the Court's Order Granting
8 Preliminary Approval of Class Action Settlement.

9 **Companion Injunctive Relief Class:** 2. All persons who are companions
10 of persons with mobility disabilities who use wheelchairs, scooters or
11 other mobility aids and who have used or will use companion seating for
12 public events located at Levi's Stadium from December 7, 2013 through
13 the date of the Court's Order Granting Preliminary Approval of Class
14 Action Settlement.

15 **Damages Class:** 3. All persons with mobility disabilities who use
16 wheelchairs, scooters or other mobility aids who have purchased,
17 attempted to purchase, or for whom third parties purchased accessible
18 seating and who have been denied equal access to Levi's Stadium's
19 facilities, services, accessible seating, parking, amenities, and privileges
20 at an event controlled by the Forty Niners Football Company, LLC; Forty
21 Niners SC Stadium Company, LLC; or Forty Niners Stadium
22 Management Company, LLC, from April 13, 2015 through the date of the
23 Court's Order Granting Preliminary Approval of Class Action Settlement.

24 *Id.* at 1. The first and second classes seek declaratory and injunctive relieve pursuant to Title II and
25 Title III of the ADA and were certified pursuant to Federal Rule of Civil Procedure ("Rule") 23(b)(2).
26 The third class seeks statutory damages under the Unruh Act and was certified pursuant to Rule
27 23(b)(3). This Court appointed Abdul Nevarez and Sebastian DeFrancesco as class representatives for
28 of the first class for injunctive relief, Priscilla Nevarez as representative of the second class for
injunctive relief, and Abdul Nevarez as representative for the third class. *Id.* at 2; *see also* Order
Granting in Part and Denying in Part Motion for Class Certification (ECF 186) ("Class Certification
Order") at 43.

29 **C. Notice to the Class and the Class Members' Favorable Reaction**

30 After preliminary approval, the Parties effected notice pursuant to this Court's Preliminary
31 Approval Order. Wallace Decl. ¶¶ 4-6; Kirkpatrick Decl. ¶¶ 3-5; Dattilo Decl. ¶¶ 2-6; Maschler Decl.
32 ¶¶ 3-5; Lampasona Decl. ¶¶ 3-5.

33 Prior to the March 30, 2020 "Class Notice Date," the Court-approved settlement administrator,
34 KCC Class Action Services, LLC ("KCC"), compiled an updated list of potential Class Members using

1 the contact information previously produced at class certification, a supplemental list covering the time
2 period from class certification to the date of preliminary approval, and potential Class Member contact
3 information obtained by Class Counsel during the pendency of this matter. *See* Preliminary Approval
4 Order, ECF 392 ¶¶ 13.b & 13.c; Dattilo Decl. ¶¶ 2-3. This process resulted in a list of 5,779 potential
5 Class Members after de-duplication. Dattilo Decl. ¶¶ 2-3. A total of 4,789 potential Class Members
6 had email addresses, and 495 mailing addresses were updated using the National Change of Address
7 Database. *See id.* ¶¶ 3, 6.

8 On March 30, 2020 KCC mailed the Court-approved long-form Notice (ECF No. 390-5) and
9 Claim Form (ECF No. 390-3) (collectively “Settlement Notice”) to all 5,779 potential Class Members
10 along with self-addressed postage prepaid return envelopes. *See id.* ¶ 4 & Ex. A. To date, 258
11 Settlement Notices have been returned as undeliverable. KCC has been able to resend thirty-three (33)
12 Settlement Notices based on its search for updated addresses. Accordingly, 5,554 (96% of the total)
13 potential Class Members known to the Parties have been sent the Settlement Notice. *See id.* ¶ 5. Also
14 on March 30, 2020, KCC emailed the Settlement Notice to the 4,789 potential Class Members (82% of
15 the total) with email addresses. *See id.* ¶ 6.

16 KCC also established a WCAG 2.0 AA-compliant settlement website
17 (www.LevisStadiumClassActionSettlement.com) to inform Class Members of the Settlement, their
18 rights and options, and applicable dates and deadlines; to make important case documents (including
19 the Settlement Agreement and operative Fourth Amended Complaint) available for review and
20 download by Class Members; to provide KCC’s and Class Counsel’s contact information; and to
21 enable Class Members to submit Damages Claim Forms and any supporting documentation
22 electronically, or to download a PDF version of the Damages Claim Form to mail to KCC, according
23 to the Class Member’s preference. *See id.* ¶ 7. KCC also established a toll-free telephone number and
24 email address for the case. *See id.* ¶¶ 8-9.

25 In addition, the Notice of Settlement was also provided to the twenty-four organizations listed
26 in Section V.C.12 of the Settlement, which were identified by Class Counsel as organizations that
27 serve the interests of persons with mobility disabilities. Kirkpatrick Decl. ¶ 3. Each form of notice
28 was published, posted or mailed by the deadlines set forth in the Settlement and the Court’s

1 Preliminary Approval Order. *See* Dattilo Decl. ¶¶ 2-6; Kirkpatrick Decl. ¶ 4 Maschler Decl. ¶¶ 3-5;
 2 Lampasona Decl. ¶¶ 3-5.

3 The Court-approved Class Notice explained the litigation and the terms of the Settlement,
 4 including the injunctive relief, release of claims, and amounts requested for the Named Plaintiffs’
 5 service awards and Class Counsel’s attorneys’ fees, costs, and litigation expenses. The Notice also
 6 informed Class Members how to object to the Settlement and provided a website and toll-free number
 7 for Class Members to obtain further information about the Settlement or Settlement documents. Class
 8 Members have until June 28, 2020 to object to the Settlement, to opt out of the Damages Class, and/or
 9 to file Claim Forms. *See* Preliminary Approval Order, ECF 392 ¶ 13.h., i.

10 Class Members have responded favorably to the proposed Settlement so far. Since the
 11 distribution of the Settlement Notice, Class Counsel has received and responded to numerous inquiries
 12 from Class Members about the Settlement, and Class Members have expressed support for the
 13 Settlement and the injunctive and monetary relief it provides. Wallace Decl. ¶ 7. As of the date of this
 14 submission, there are no objections to the proposed Settlement, there are no opt-outs from the damages
 15 class, and KCC has received 3,866 Claim Forms. Wallace Decl. ¶¶ 8-9; Dattilo Decl. ¶¶ 11-12.

16 III. ARGUMENT

17 A. The Settlement Agreement Is Fair and Reasonable and Should be Finally Approved

18 1. The Legal Standard for Final Approval

19 The law favors the settlement of class actions. *See, e.g., In re Hyundai and Kia Fuel Economy*
 20 *Litig.*, 926 F.3d 539, 556 (9th Cir. 2019) (en banc). “[T]he decision to approve or reject a settlement is
 21 committed to the sound discretion of the trial judge because he [or she] is exposed to the litigants and
 22 their strategies, positions, and proof.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)
 23 (internal citations and quotations omitted).

24 To grant final approval of a settlement, “Fed. R. Civ. P. 23(e) requires the district court to
 25 determine whether a proposed settlement is fundamentally fair, adequate, and reasonable.” *Hanlon*,
 26 150 F.3d at 1026; *see also, Officers for Justice v. Civ. Serv. Comm’n of City and County of San*
 27 *Francisco*, 688 F.2d 615, 625 (9th Cir. 1982) (stating that the “universally applied standard” is whether
 28 the settlement is “fundamentally fair, adequate, and reasonable”). “It is the settlement taken as a

1 whole, rather than the individual component parts, that must be examined for overall fairness.”

2 *Hanlon*, 150 F.3d at 1026.

3 Rule 23(e)(2) states as follows:

4 a court may approve a settlement only on finding that it is fair, reasonable, and
5 adequate after considering whether: (A) the class representatives and class
6 counsel have adequately represented the class; (B) the proposal was negotiated
7 at arm’s length; (C) the relief provided for the class is adequate, taking into
8 account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness
9 of any proposed method of distributing relief to the class, including the method
10 of processing class-member claims; (ii) the terms of any proposed award of
11 attorney’s fees, including timing of payment; (D) The proposal treats class
12 members equitably relative to each other.

13 Under well-settled Ninth Circuit precedent, in order to assess a class action settlement, courts
14 must balance several similar factors, including the following “*Hanlon* factors”:

15 [t]he strength of plaintiff’s case; the risk, expense, complexity, and likely
16 duration of further litigation; the risk of maintaining class action status
17 throughout the trial; the amount offered in settlement; the extent of discovery
18 completed and the stage of the proceedings; the experience and views of counsel;
19 the presence of a governmental participant; and the reaction of the class
20 members to the proposed settlement.

21 *Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012) (quoting *Hanlon*, 150 F.3d at 1026). These
22 same factors are also sometimes referred to as the eight “*Churchill* factors.” See, e.g., *In re Bluetooth*
23 *Headset Prods. Liability Litig.*, 654 F.3d 935, 946 (9th Cir. 2011) (quoting *Churchill Vill., L.L.C. v. Gen.*
24 *Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)).

25 To satisfy appellate review, the Court must demonstrate comprehensive consideration of all
26 factors. However, in conducting this analysis, the Ninth Circuit has noted that ““it is the very
27 uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce
28 consensual settlements.”” *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 964 (9th Cir. 2009) (quoting
Officers for Justice, 688 F.2d at 625). Accordingly, when determining whether to grant final approval,
the Court’s role in reviewing “what is otherwise a private consensual agreement negotiated between
the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the
agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties,
and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Officers*
for Justice, 688 F.2d at 625; see also *In re Toys “R” Us- Delaware, Inc.- Fair & Accurate Credit*

1 *Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 449 (C.D. Cal. 2014).

2 For several reasons, the proposed Settlement clearly meets the requirements for final approval.

3 **2. The Rule 23(e)(2) Factors Weigh Strongly in Favor of Final Approval.**

4 **a. The Class Representatives and Class Counsel Have Adequately**
 5 **Represented the Class.**

6 As this Court has previously found when it certified this case as a class action and when it
 7 preliminarily approved the Settlement, the Class Representatives and Class Counsel have adequately
 8 represented the Classes. As demonstrated in the Motion for Service Awards filed concurrently
 9 herewith, the Class Representatives have no conflicts with Class Members, actively participated in the
 10 litigation and represented the interests of the certified Plaintiff Classes. *See also* Class Certification
 11 Order (ECF No. 186 at 24); Preliminary Approval Order (ECF No. 392 ¶ 3). As demonstrated in the
 12 Motion for Reasonable Attorneys' Fees, Costs, and Expenses filed concurrently herewith, and
 13 consistent with the Court's findings at Class Certification that "Plaintiffs' counsel has vigorously
 14 litigated this case from the beginning, and ...will continue to do so," (ECF No. 186 at 24), Class
 15 Counsel have thoroughly investigated and litigated the Class claims, obtained outstanding results on
 16 behalf of the Classes, and have no conflicts of interest with the certified Classes. This factor supports a
 17 finding that the Settlement is fair, reasonable and adequate. Fed. R. Civ. P. 23(e)(2)(A).

18 **b. The Settlement Was Negotiated at Arm's Length.**

19 "Where a settlement is the product of arm's-length negotiations conducted by capable and
 20 experienced counsel, the court begins its analysis with a presumption that the settlement is fair and
 21 reasonable." *Stemple v. RingCentral, Inc.*, No. 3:18-cv-04909-LB, 2019 U.S. Dist. LEXIS 138520, at
 22 *12 5 (N.D. Cal. Aug. 15, 2019) (internal quotation omitted); *see also, In re Hyundai and Kia*, 926
 23 F.3d at 570 ("[W]e put a good deal of stock in the product of an arm's-length, non-collusive,
 24 negotiated resolution.") (quoting *Rodriguez*, 563 F.3d at 965).

25 The Settlement was reached after informed negotiations supervised by two well-respected
 26 mediators experienced in class action cases, Michael Loeb and Mark Rudy. Wallace Decl. ¶ 13. The
 27 Parties participated in eight in-person mediations over the eighteen-month period between May 2018
 28 and August 2019. *Id.* The first three mediations took place with Mr. Loeb; the latter five mediations

1 took place with Mr. Rudy. *Id.* Mr. Rudy made a mediator's proposal regarding the amount of class
 2 damages, which was accepted by the Parties. Six months later, at the conclusion of the mediation
 3 process, Mr. Rudy made a mediator's proposal regarding reasonable attorneys' fees and costs. Both
 4 sides accepted his proposal two weeks later. *Id.* ¶ 15. All major issues regarding injunctive relief were
 5 resolved prior to the mediation of fees and costs. *Id.*

6 **c. The Relief Offered in Settlement Is More than Adequate.**

7 **i. The Settlement Provides for Extensive Injunctive Relief and a**
 8 **Substantial Damages Fund.**

9 **(a) Injunctive Relief**

10 The injunctive relief guaranteed by the Settlement constitutes an excellent result for the
 11 Plaintiff Classes. The Settlement provides comprehensive injunctive relief regarding all of the claims
 12 in the Fourth Amended Complaint, including Defendants' failure to provide physical access and
 13 Defendants' failure to make reasonable modifications in policy and practice to ensure equal access to
 14 the Stadium's facilities and services. The Settlement requires Defendants to remediate nearly all of the
 15 access barriers identified by Plaintiffs' experts, as well as requiring Defendants to remove many other
 16 access barriers that were not identified in Plaintiffs' Complaint. As this Court will recall, Plaintiffs'
 17 Exhibit A identified 2,699 access barriers in the Stadium and its related facilities, including its parking
 18 lots and the pedestrian right of way leading from those lots to the Stadium. The Settlement will
 19 remediate all but 25 of the alleged barriers (*i.e.*, all but 1% of the barriers identified in the Complaint).³

20 _____
 21 ³ These alleged barriers include: 18 alleged barriers regarding the lack of clear space on counters in the
 22 Stadium concessions; 4 alleged barriers regarding the location of the accessible toilet compartment
 23 door openings and whether they were located too far from the side wall or partition; an alleged barrier
 24 regarding the lack of wheelchair maneuvering space at urinals; and 2 alleged barriers regarding the
 25 existence of dirt sections of the pedestrian right of way serving the remote parking lots. Plaintiffs
 26 compromised regarding the clear space on the counters because of a recent U.S. Access Board
 27 interpretive guidance in which the Board stated that this type of condition did not violate the 2010
 28 ADAS. Similarly, the parties' experts had a good-faith disagreement regarding the correct
 interpretation of the requirement regarding the location of accessible toilet compartment door openings
 and the side walls or partitions. The lack of clear space for wheelchair users at urinals was not
 remediated because the Stadium's restrooms have designated accessible wheelchair stalls and the
 Settlement provides comprehensive remediation regarding same. Settlement Agreement § III.A.1.i.,
 Exh. A at Items 823 through 1502.1. Finally, it was not necessary to remediate the two dirt sections in
 the pedestrian right of way because the Settlement provides compliant accessible parking in the Main
 Lot immediately adjacent to the Stadium, and compliant paths of travel from the Main Lot to the
 Stadium's entrances. *See Id.*, Ex. J.

1 Wallace Decl. ¶¶ 28-29. The Settlement will also remediate numerous other barriers in the Stadium's
2 stairs and breastfeeding stations that were not included in the Complaint.

3 The detailed remedial access work that is specified in the Settlement Agreement and Exhibits
4 A-L will bring the Stadium and its surrounding pedestrian right of way into full compliance with the
5 2010 ADAS and the 2019 CBC. Moreover, the Settlement provides extensive injunctive relief
6 regarding all of the other problems with ticketing, transportation, and other services that were
7 described by the Class Members in their declarations. *See* Appendix of Class Member Declarations
8 (ECF No. 139). Specifically, the Settlement mandates the following access work and improvements,
9 all of which must fully comply with the 2010 ADAS and the 2019 CBC:

10 Parking, Exterior Path of Travel, and Entrances. The Settlement will provide 282 accessible
11 parking spaces immediately adjacent to the Stadium in the Main Lot. Settlement Agreement §
12 III.A.3.a, Ex. J. This is a sufficient number of parking spaces to meet the accessible parking
13 requirement for all of the lots that Defendants use to provide parking. Wallace Decl. ¶ 20. An
14 accessible path of travel will connect the accessible parking spaces in the Main Lot to the primary
15 entrances to the Stadium at Gates A and C. The accessible path of travel, clearly marked and eight feet
16 in width (*i.e.*, double the 48 inch width specified in the 2010 ADAS and the 2019 CBC), will connect
17 all of the accessible external features of the Stadium, including any amenities in the Main Lot (such as
18 portable toilets and coat check), the stores and other points of interest in the Plaza, to the accessible
19 Box Office windows, and the Stadium restaurants. Settlement Agreement §§ III.A.1.b, Exs. B, C, and
20 J. The specifications for this remedial work are set forth in the drawings comprising Exhibit B (for the
21 Plaza area and exterior entrances to the Stadium) and Exhibit J (for the path of travel from the parking
22 lot) to the Settlement Agreement. The accessible path of travel to be established and maintained
23 leading to and between the Bourbon Steak, Bourbon Pub, and Tailgate restaurants is described in
24 further detail at Section III.A.2 of the Settlement Agreement. As a result of this access work, Class
25 Members will no longer have to struggle with inaccessible parking, inaccessible security gates,
26 inaccessible entrances, inaccessible ticket windows at the Box Office, and many other similar access
27 problems that existed on the exterior of the Stadium. And, the parking adjacent to the Stadium will be
28 priced at the lowest price Defendants charge for parking in the remote parking lots. *Id.* at § III.A.3.b.

1 Pedestrian Rights of Way Leading to the Stadium. Some Class Members may continue to
2 choose to park in the fifteen off-site parking lots that also serve Levi's Stadium. The pedestrian right
3 of way connecting those off-site parking lots to the Stadium contain numerous barriers to access,
4 including curb ramps that lack a flush transition to the street and have excessive running, cross,
5 counter, and side-flare slopes; sidewalks with excessive running and cross slopes, surface gaps, and
6 abrupt changes in level; and pedestrian signals that fall outside of reach range for persons using
7 wheelchairs and scooters. The proposed Settlement requires the City of Santa Clara to make these
8 portions of the pedestrian right of way fully accessible to persons with mobility disabilities. In total,
9 the Settlement requires the remediation of 454 non-compliant conditions, including 236 curb ramp
10 barriers present on 97 curb ramps, 203 sidewalk barriers, and 15 barriers related to inaccessible
11 pedestrian signals. *Id.* § III.A.4; Exs. H, I.

12 Stadium Box Office. To ensure an accessible box office and approach to the box office at the
13 Stadium, Defendants are required to remediate the box office-related barriers identified in Exhibit A to
14 the Settlement Agreement in the manner specified and in Section III.A.1.c. and Exhibit C of the
15 Settlement. This includes removing the foot bar at the base of the designated accessible ticket window
16 to allow a forward approach by wheelchair users, raising the existing grade to provide a level
17 accessible area in front of the window, using accessible queuing plans, providing signage for the
18 accessible window and providing all services at the accessible window that are offered to the public.
19 *Id.*, Ex. C notes 8, 11.

20 Interior Circulation Within the Stadium. The Settlement ensures that Class Members will have
21 an accessible path of travel throughout the Stadium. Defendants are required to remediate the specific
22 conditions in the interior path of travel identified in Exhibit A in the manner specified therein, and no
23 ramps in the path of travel will be permitted to have excessive running slopes. *Id.* § III.A.1.e. The
24 location and specifications of the accessible interior path of travel are set forth in Exhibit D.

25 Signage, Access Map, and Trained Stadium Staff. The Settlement also requires a detailed
26 signage plan to direct Class Members to the accessible exterior and interior features of the Stadium.
27 Settlement Agreement § III.A.1.e, Ex. D. Clearly marked accessible paths and overhead signage will
28 guide Class Members from the Main Lot to the entrances to the Stadium, and to the entrances leading

1 to the elevators. *Id.* This information will also be provided in a comprehensive access map that will
2 be available both electronically and on paper. *Id.* § III.D. Further, Stadium employees will be trained
3 on the location of accessible elevators, restrooms, and seating so that Class Members can get reliable
4 assistance with finding their way to their seats. *Id.* § III.F.1. Under the Settlement, Class Members
5 will no longer have to struggle and engage in trial and error efforts to find the accessible routes and
6 features within the Stadium.

7 Accessible seating, companion seating, and restrooms. The Settlement requires Defendants to
8 make extensive access improvements within the Stadium itself. Significantly, it requires Defendants to
9 perform access work to the designated accessible seating so that it strictly complies with the
10 requirement of the 2010 ADAS for level seating spaces. *Id.*, Ex. E. As a result of this access work,
11 Class Members who use wheelchairs will no longer roll around in their seating spaces because of the
12 excessive drainage gradient that was erroneously constructed. The number of accessible and
13 companion seats shall comply with the 2010 ADAS standards. Arm rests and cupholders will be
14 provided for companion seats to make them equivalent to standard seating. *Id.* § III.A.1.f., Ex. E.
15 Further, Defendants will be required to remove all of the barriers identified in the Stadium's restrooms
16 in accordance with the remedial work specified in Exhibit A to the Settlement. *Id.* at § III.A.1.i., Ex. A
17 at Items 823 through 1502.1.

18 Social and Dining Spaces and Features, Including Restaurants, Bars, Drink Rails, and Drinking
19 Fountains. Some of the most significant barriers in the Stadium included the general lack of accessible
20 tables in restaurants, accessible lowered sections in bars, and the inaccessibility of other social spaces
21 such as the Stadium drink rails and other counters at which patrons congregate or make purchases from
22 Stadium personnel. As a result of the Settlement, Defendants will provide accessible seating and bar
23 spaces at all locations at which food and drink is served or consumed within the Stadium. Settlement
24 Agreement §§ III.A.1.g, III.A.1.h, III.A.2, Ex. E. Further, the Settlement requires that all of the
25 Stadium's drinking fountains be made accessible. *Id.* § III.A.1.j.

26 Shops and Concessions. The Settlement requires that all of the barriers identified in the
27 Stadium's shops and concessions be remediated in accordance with Exhibit A. *Id.* §§ III.A.1.k, m.
28 This access work will provide Class Members and their companions with equal access to the Stadium's

1 shops and concessions.

2 Boxes and Suites. The Settlement will make significant access improvements to the Stadium's
3 boxes and suites. Defendants will be required to provide accessible tables and other furniture within
4 the boxes and suites in place of the existing inaccessible furniture. In addition, Defendants will be
5 required to provide compliant accessible seating in the boxes and suites so that users with mobility
6 disabilities will be able to access their seats and enjoy an unobstructed sightline to watch Stadium
7 events. *Id.* § III.A.1.l.

8 Stairs and Handrail Extensions. The Settlement requires Defendants to provide compliant
9 handrail extensions throughout the Stadium so that Class Members will be able to safely and easily
10 transition from stairs and ramps to the landings at the top and bottom of same. *Id.* § III.A.1.n. In
11 addition, the Settlement requires important access fixes that go beyond the barriers identified in
12 Exhibit A to the Complaint, and which Plaintiffs would *not* have been able to obtain at trial.
13 Specifically, the Settlement requires that Defendants remove access barriers in the Stadium's external
14 stairways, including barriers such as abrupt nosings on the risers of the stairs that constitute a tripping
15 hazard. *Id.* § III.A.1.s. This important access and safety work will be performed on the external stairs
16 at Gate A and Gate C, as well as the internal stairs at Toyota Gate F, the stairs within the Stadium bowl
17 itself, and the stairs within the United Club. *Id.*

18 First Aid and Breastfeeding Stations. Work required to make the Dignity Health First Aid
19 Room on Level 300 (Main Concourse) accessible are specified in Section III.a.1.p. of the Settlement
20 Agreement. The Settlement also requires that all of the inaccessible conditions in the Stadium's
21 breastfeeding stations be remediated so that women with disabilities will be able to access these
22 important features. *Id.* § III.A.1.p.

23 Restaurants. The Settlement requires Defendants to ensure that the Stadium restaurants
24 remediate numerous access barriers identified in Exhibit A, including inaccessible entrances, paths of
25 travel, dining areas, tables and restrooms. Settlement Agreement § III.A.2.

26 Auditorium – Section III.A.1.r. of the Settlement Agreement requires that Defendants provide
27 an accessible means for gaining access to the stage and integrated accessible and companion seating.

28 Ticketing. The Settlement provides important relief regarding ticketing. Defendants will no

1 longer require Class Members to purchase or exchange standard tickets for tickets for accessible
2 seating at the Stadium Box Office. Instead, Class Members may now simply purchase or exchange
3 standard tickets for tickets for accessible seating electronically without being required to go to the Box
4 Office in-person. *Id.* § III.C.

5 Other Relief. The Settlement requires Defendants to provide accessible shuttles and golf carts,
6 to maintain the Stadium's access features in operating condition by performing maintenance on a
7 specific schedule, and to provide Class Members with a complaint and grievance procedure regarding
8 access or service problems. *Id.* §§ III.B, III.E, X.

9 Compliance Period and Deadlines. In all cases, express deadlines are set forth in the
10 Settlement Agreement for the completion of the specified remediation work to be undertaken.
11 Although these deadlines vary depending on the scope of the work and other factors identified during
12 the settlement negotiations, all of the remedial work must be completed within a three-year compliance
13 period. *Id.* § II.D.

14 Monitoring. Under the Settlement Agreement's reporting and monitoring provisions, Class
15 Counsel will be able to ensure that Defendants complete all of the access work and other remedial
16 measures required by the Settlement. The Settlement Agreement includes periodic reporting
17 requirements for Defendants to provide specific information regarding their progress and the status of
18 scheduled access work. *Id.* § X.B. Class Counsel are entitled to review designs, drawings, plans and
19 specifications for the access work and to conduct semi-annual inspections to monitor compliance. *Id.*
20 §§ X.B., XI. The Settlement provides for reasonable attorneys' fees for Class Counsel and for
21 reasonable expert costs on an annual basis in connection with these monitoring and enforcement
22 activities. *Id.* § XIV.B.

23 Continuing Jurisdiction. This Court will also retain jurisdiction in the event that the Parties are
24 unable to resolve any disputes regarding implementation. Settlement Agreement § XV.

25 In summary, the Settlement constitutes an excellent result for the Plaintiff Classes. It provides
26 Class Members with comprehensive injunctive relief, including a detailed remedial plan to remove
27 over 2,674 access barriers which will guarantee that the Stadium and its related facilities provide full
28 and equal access as required by the ADA and the Unruh Act. Wallace Decl. ¶¶ 19-29. It is doubtful

1 that this Court could have ordered greater injunctive relief if Plaintiffs prevailed at trial.

2 **(b) Damages**

3 A proposed settlement is not to be measured against “a hypothetical or speculative measure of
4 what might have been achieved.” *Officers for Justice*, 688 F.2d at 625; *see also, In re Anthem, Inc.*
5 *Data Breach Litig.*, 327 F.R.D. 299, 322 (N.D. Cal. 2018); *Nat’l Rural Telecomms. Coop. v.*
6 *DIRECTV, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) (“[I]t is well-settled law that a proposed
7 settlement may be acceptable even though it amounts to only a fraction of the potential recovery that
8 might be available to the class members at trial.”).

9 The Class damages fund represents an outstanding result for the Damages Class. As an initial
10 matter, the \$24 million damages fund in this case is the largest ever obtained in a physical access case
11 under Title III of the ADA with Unruh Act damages claims. Wallace Decl. ¶ 47; *see also* ECF No.
12 375-19 (settlement comparison chart). This non-reversionary fund will guarantee a substantial
13 recovery to the Damages Class Members who make claims, with a minimum recovery of \$4,000 and a
14 maximum recovery of \$80,000 per person depending on the number of visits during which the Class
15 Member encountered an access barrier that caused them “difficulty, discomfort or embarrassment,”
16 and depending on the number of valid claims filed. *Id.* §§ VII.A; VII.D; VIII.A.1.

17 The \$24 million recovery compares favorably with Plaintiffs’ estimates of total exposure. As
18 one point of comparison, the \$24 million settlement amount represents 34.3% of the approximate \$70
19 million outside exposure analysis calculated by Plaintiffs’ damages expert. Plaintiffs’ aggregate
20 damages model was based on the assumption that a Class Member was in attendance at a particular
21 event if 100% of the seats sold to that Class Member were used. If a lesser percentage of seats were
22 actually used for a particular event, the damages calculation for that Class Member was based on a
23 corresponding percentage of the statutory amount of \$4,000. This assumes the seats were actually sold
24 to and used by Class Members with mobility disabilities, and that they encountered at least one barrier
25 that caused them “difficulty, discomfort or embarrassment” on each occasion that they attend an
26 event.⁴ Wallace Decl. ¶ 32. Plaintiffs’ damages expert calculated interest on these claims at

27 _____
28 ⁴ Under the Unruh Act, a plaintiff may recover the \$4,000 minimum per visit to a place of public
accommodation, not per barrier encountered on any visit. Cal. Civ. Code § 55.56(a).

1 approximately \$9 million, using a 10% interest rate which was likely to be disputed at trial. *Id.* These
 2 figures are based on Plaintiffs’ assessment of a best-case scenario. *Id.* To have obtained such a result
 3 at trial, Plaintiffs would have had to prove that all Damages Class Members visited the Stadium on at
 4 least one occasion and encountered a barrier that caused them “difficulty, discomfort or
 5 embarrassment.” During expert discovery, Defendants strongly disputed that Plaintiffs’ damages
 6 model provided a reliable and accurate means of calculating the number of visits on which Class
 7 Members encountered such barriers. They also strongly disputed that such claims could be resolved
 8 manageably at a class trial. Indeed, the uncertain and risky nature of calculating the number of visits
 9 by disabled class members to a public accommodation which would qualify for a \$4,000 damages
 10 award was recognized by Judge Alsup in his decision in the *Castaneda* case, and was a factor in his
 11 approval of the damages fund. *Castaneda v. Burger King Corp.*, No. 3:08-cv-04262-WHA, 2010 WL
 12 2735091, at *3 (N.D. Cal. July 12, 2010).

13 Moreover, the Damages Class’s recovery of 34.3% of Plaintiffs’ maximum estimated class
 14 damages compares favorably with recoveries that have been held to be fair, reasonable, and adequate
 15 in other class actions. *See, e.g., In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. at 319 (approving
 16 recovery of 14.5% of the “projected recovery that Settlement Class Members would be entitled to if
 17 they prevailed on their claims” and collecting authorities); *Edwards v. Nat’l Milk Producers Fed’n*,
 18 No. 4:11-cv-04766-JSW, 2017 WL 3623734, at *7 (N.D. Cal. June 26, 2017) (approving recovery of
 19 30% of maximum damages); *In re Optical Disk Drive Products Antitrust Litig.*, No. 3:10-md-2143 RS,
 20 2016 WL 7364803, at *5 (N.D. Cal. Dec. 12, 2016) (approving 31% of maximum damages); *Winans v.*
 21 *Emeritus Corp.*, No. 3:13-cv-03962-HSG SG, 2016 U.S. Dist. LEXIS 3212, at *14 (N.D. Cal. Jan. 11,
 22 2016) (approving recovery of 33.2% of maximum damages and collecting authorities).

23 **(c) The Settlement Does Not Permit Any Reversion**

24 The Settlement does not permit any reversion of any part of the Class damages fund to
 25 Defendants. The entire \$24 million class damages fund will be distributed to Class Members who
 26 make validated claims. Settlement Agreement § VIII.

27 **(d) The Settlement Contains a Narrow Release of Claims**

28 The Settlement only releases the claims that were alleged, or that could have been alleged,

1 based on the factual allegations of the Fourth Amended Complaint. In exchange for the equitable
 2 relief provided for by the Agreement, Class Members and Plaintiffs release “any and all claims that are
 3 the subject of, included within, and/or arise from this lawsuit, including without limitation, all claims,
 4 liabilities, obligations, demands, actions, and claims under Title II and Title III of the ADA and
 5 California Civil Code § 51, *et seq.*, and their accompanying regulations that were brought or could
 6 have been brought based on the facts alleged in the Complaint against the Released Parties for
 7 injunctive or declaratory relief only relating to Conditions that allegedly deny access to the facilities
 8 specified in Exhibit A and access to Defendants’ ticketing services for wheelchair accessible and
 9 companion seating.” *Id.* § XIII.A.1. This release only applies for the duration of the agreement, *i.e.*
 10 three and a half years after it becomes effective. *Id.* § XVI. The scope of the release for the Damages
 11 Class is essentially the same, except that it only releases claims for statutory damages that were
 12 brought or could have been brought based on the facts alleged in the Complaint for the period of time
 13 up to the date on which the Court grants Preliminary Approval of the Settlement Agreement.
 14 Settlement at § XIII.A.2. These narrow releases fully accord with Ninth Circuit precedent. *Hesse v.*
 15 *Sprint Corp.*, 598 F.3d 581, 590 (9th Cir. 2010).

16 ii. **The Risk, Expense, Complexity, and Likely Duration of Further**
 17 **Litigation**

18 Consistent with Court’s finding at preliminary approval, the potential risks, expense,
 19 complexity and duration of further litigation of this case support final approval. *See* Preliminary
 20 Approval Order (ECF No. 392 ¶ 4). Courts have long recognized the inherent risks and “vagaries of
 21 litigation,” and emphasized the comparative benefits of “immediate recovery by way of the
 22 compromise to the mere possibility of relief in the future, after protracted and expensive litigation.”
 23 *Nat’l Rural Telecomms. Coop.*, 221 F.R.D. at 526; *see also, In re Anthem, Inc. Data Breach Litig.*, 327
 24 F.R.D. at 318 (delay in recovery as a result of trial and appellate proceedings weighs in favor of final
 25 approval where “[s]ettlement provides the Class with timely, certain, and meaningful recovery”). The
 26 “inherent” risks of protracted litigation, trial and appeal are all factors that militate in favor of
 27 settlement in systemic access cases under the ADA. *See, e.g., Castaneda*, 2010 WL 2735091, at *3;
 28 *Californians for Disability Rights, Inc. v. Cal. Dept. of Transp.*, No. 4:06-cv-05125-SBA, 2010 WL

1 2228531, at *3 (N.D. Cal. June 2, 2010) (“The settlement affords significant and immediate relief that
2 may never have materialized had the trial concluded.”). Proceeding to the series of short trials
3 regarding groups of barriers that this Court had ordered (and the inevitable appeals of those decisions)
4 would have added many years to the resolution of this case. Each trial would have required the
5 presentation of extensive expert testimony, thereby increasing the expense of these already lengthy
6 proceedings. Given the importance of the accessibility of the Stadium to the Class Members lives, the
7 potential for years of delayed recovery is a significant concern. Considered against the risks of
8 continued litigation, and the importance of the accessibility of the Stadium and its related facilities to
9 the Class Members, the totality of relief provided under the proposed Settlement is fair, reasonable,
10 and adequate. Wallace Decl. ¶¶ 38-46.

11 **iii. The Settlement Provides Important Procedural Protections to the**
12 **Class Members, and Provides an Effective Method for Distributing**
13 **Monetary Relief to the Class.**

14 Members of the Injunctive Relief and Companion Classes, as well as Damages Class Members
15 who do not opt out, have been given the opportunity to object to the settlement and to appear at the
16 Final Approval/Fairness Hearing in order to have their objections heard by the Court. Damages Class
17 Members who did not already opt out of the case at the class certification stage have been given
18 another opportunity to opt-out of the proposed Settlement should they so desire. Settlement
19 Agreement § VI. This satisfies the requirements of Rule 23(e)(4).

20 The Claims Process set forth in the Settlement Agreement also provides Damages Class
21 Members with a full and fair opportunity to submit claims for damages and, should they disagree with
22 Defendants’ records regarding the number of events that they attended at the Stadium, to provide
23 documentation and/or an explanation to show a different number of visits. Settlement Agreement §
24 VII.G, H. If there is a dispute, the Settlement Administrator will consult with the Parties to determine
25 whether an adjustment is warranted. Damages payments to eligible Damages Class Members will be
26 distributed in the form of checks and checks returned as undeliverable will be traced and re-mailed. *Id.*
27 § VIII.A.3 & 4. These procedural safeguards further support final approval, under both Rule
28 23(e)(2)(A)(ii) & D, and the *Hanlon/Churchill* factors.

1 **d. The Settlement Provides an Equitable Plan of Allocation and Does Not**
 2 **Grant Preferential Treatment to the Named Plaintiffs.**

3 Consistent with Rule 23(e)(2)(D), the Settlement provides for an equitable plan of allocation of
 4 money damages without granting preferential treatment to any particular Class Members. Settlement
 5 at § VII.A. All of the class members who make claims that confirm, as required under applicable law,
 6 that they have mobility disabilities and encountered one or more barriers at Levi’s Stadium or its
 7 related facilities that caused them “difficulty, discomfort or embarrassment” will be able to recover a
 8 minimum of \$4,000 or a maximum of \$80,000 depending on the number of visits in which they
 9 encountered such barriers, and the number of validated claims filed. This objective allocation plan
 10 does not grant preferential treatment to any member of the Damages Class, or to the Named Plaintiffs,
 11 who are subject to the same damages allocation plan as the absent Class Members.

12 As discussed below, subject to Court approval, the Named Plaintiffs would also receive service
 13 awards not to exceed \$5,000 each, which Plaintiffs submit are fair and reasonable payments to
 14 recognize and compensate the Named Plaintiffs for the efforts and risks they took in stepping forward
 15 to assert claims, their participation in discovery and depositions, and the work done on behalf of the
 16 Plaintiff Classes to prosecute the claims. *See* Plaintiffs’ Motion for Service Awards (ECF No. 394)
 17 and discussion *infra* at § III.B.

18 **3. The Remaining Churchill/Hanlon Factors Also Weigh Strongly in Favor of Final**
 19 **Approval.**

20 **a. The Strength of Plaintiffs’ Case**

21 There can be no reasonable dispute that Plaintiffs developed a strong case on the merits. However,
 22 the Parties disputed which disability access standard applied to the Stadium (the 2010 Americans with
 23 Disabilities Act Standards (“2010 ADAS”) or the 1991 Americans with Disabilities Act Access Guidelines
 24 (“1991 ADAAG”). This issue involved novel and difficult questions of law, as well as complex factual
 25 disputes regarding groundbreaking at the site and the start of construction. The resolution of these legal
 26 and factual issues was therefore uncertain. If Plaintiffs had lost on this issue, they would not have been
 27 able to seek relief regarding many access barriers that were covered by the 2010 ADAS, but not by the
 28 older and more lenient 1991 ADAAG. As this Court has stated, “legal uncertainty favors approval.” *In re*

1 *Yahoo Mail Litig.*, Nos. 13-CV-4980-LHK, 13-CV-4989-LHK, 13-CV-5326-LHK, 13-CV-5388-LHK,
 2 2016 U.S. Dist. LEXIS 115056, at *20 (N.D. Cal. Aug. 25, 2016); *see also*, *Dickey v. Advanced Micro*
 3 *Devices, Inc.*, No. 15-cv-04922-HSG, 2020 U.S. Dist. LEXIS 30440, at *13 (N.D. Cal. Feb 21, 2020)
 4 (“Generally, unless the settlement is clearly inadequate, its acceptance and approval are preferable to
 5 lengthy and expensive litigation with uncertain results.”) (quoting *Ching v. Siemens Indus., Inc.*, No. 3:11-
 6 cv-04838-MEJ, 2014 U.S. Dist. LEXIS 89002, at *13 (N.D. Cal. June 27, 2014)). In contrast, pursuant to
 7 the Settlement it is guaranteed that all areas of the Stadium will be brought into substantial compliance with
 8 the 2010 ADAS. Accordingly, this factor favors final approval.

9 **b. The Risk of Maintaining Class Action Status Through Trial**

10 This was the first disability access case in which a money damages class was certified
 11 subsequent to the Supreme Court’s decision in *Walmart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011).
 12 Defendants argued vigorously against certification of a damages class, contending that certification of
 13 such a class was precluded by the allegedly individualized questions raised by establishing entitlement
 14 to money damages under California Civil Code Section 55.56. Post *Dukes*, the Ninth Circuit has not
 15 yet addressed the propriety of class certification of a disability access case for money damages under
 16 Fed. R. Civ. Proc. 23(b)(3). Thus, there was a significant risk that Plaintiffs would not be able to
 17 maintain class status through trial with respect to the damages class, and/or that there would be a risk
 18 of decertification on appeal. Accordingly, this factor weighs in favor of approving the class settlement.

19 **c. The Extent of Discovery Completed and the Stage of the Proceedings**

20 Courts require the parties to have conducted sufficient discovery to be able to make an
 21 informed decision about the value and risks of the action and come to a fair settlement. *Linney v.*
 22 *Cellular Alaska P’ship*, 151 F.3d 1234, 1239 (9th Cir. 1998). The purpose of the Ninth Circuit’s
 23 consideration of the extent of the parties’ discovery is to ensure that counsel negotiating the pending
 24 settlement were fully informed of the facts and issues at stake. *Rodriguez*, 563 F.3d at 967 (affirming
 25 the district court’s finding that discovery had been extensive where the court “could find that counsel
 26 had a good grasp on the merits of their case before settlement talks began”); *Hanlon*, 150 F.3d at 1027
 27 (affirming the district court’s approval of class settlement where “[t]here [was] no evidence to suggest
 28

1 that the settlement was negotiated in haste or in the absence of information illuminating the value of
2 plaintiffs' claims").

3 As this Court found when preliminarily approving the Settlement, "substantial evaluation of the
4 merits, through extensive litigation, including motion practice, [and] fact and expert discovery over the
5 three years since filing, has been conducted such that Counsel for the Parties are able to reasonably
6 evaluate their respective positions." Preliminary Approval Order (ECF 392 ¶ 4). Indeed, at the time of
7 settlement the Parties had completed fact and expert discovery, and were in the process of preparing
8 for trial. These and other proceedings in the case produced a thorough pre-settlement vetting of the
9 factual and legal bases for Plaintiffs' claims and the key defenses thereto. Thus, by the time the Parties
10 reached a settlement, the litigation had proceeded to a point in which the Parties had a clear view of the
11 strengths and weaknesses of their cases and were able to make a well-informed decision about
12 settlement. *Id.* ¶ 41.

13 In *In re Anthem, Inc. Data Breach Litigation*, this Court found that this factor favored final
14 approval where the parties "engaged in extensive motion practice, including fifteen discovery
15 motions," reached a settlement after class-certification discovery and briefing, and had completed fact
16 and expert discovery, including the review of 3.8 million pages of documents. 327 F.R.D. at 320.
17 While the parties took and defended far more depositions in *In re Anthem* than in this case, the overall
18 scope of discovery and the stage of proceedings prior to settlement was similar. Accordingly, this
19 factor further supports final approval.

20 **d. The Experience and Views of Counsel**

21 Courts must also consider the experience and views of counsel regarding the settlement. *See*
22 *Churchill Vill., L.L.C.*, 361 F.3d at 576-77. "Parties represented by competent counsel are better
23 positioned than courts to produce a settlement that fairly reflects each party's expected outcome in
24 litigation." *See Toys "R" Us*, 295 F.R.D. at 455 (quoting *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373,
25 378 (9th Cir. 1995)).

26 Class Counsel have extensive experience litigating and settling systemic disability access and
27 other complex class actions. Wallace Decl. ¶ 44. Under applicable law, the fact that qualified and
28 well-informed counsel endorse the proposed settlement as being fair, reasonable, and adequate weighs

1 in favor of approval. *See, e.g., In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. at 320; *Koller v. Med*
 2 *Foods, Inc.*, No. 3:14-CV-2400-RS, 2018 U.S. Dist. LEXIS 231901, at *10-11 (N.D. Cal. Aug. 29,
 3 2018); *Brown v. Hain Celestial Grp., Inc.*, No. 3:11-cv-03082-LB, 2016 U.S. Dist. LEXIS 19275, at
 4 *15-16 (N.D. Cal. Feb. 17, 2016).

5 **e. The Presence of a Governmental Participant**

6 In determining the fairness of a settlement, the Court should consider whether the proposed
 7 settlement includes a governmental participant. Although the City of Santa Clara and the Santa Clara
 8 Stadium Authority are government entities and Defendants herein, the Ninth Circuit in *Hanlon* was
 9 referring to settlements in which the government was involved as a prosecutor. *See Johnson v. Shaffer*,
 10 No. 2:12-cv-1059-KJM-ACP, 2016 WL 3027744, at *5 (E.D. Cal. May 27, 2016) (citing *Hanlon*, 150
 11 F.3d at 1026); *Marshall v. Holiday Magic, Inc.*, 550 F.2d 1173, 1178 (9th Cir. 1977) (citing SEC
 12 approval of settlement as weighing in favor of approval, where SEC was prosecuting a parallel action).
 13 Accordingly, this factor weighs neither for nor against final approval of the Settlement Agreement.
 14 *See, e.g., In re Animation Workers Antitrust Litig.*, No. 5:14-cv-04062-LHK, 2016 WL 6841655, at *2
 15 (N.D. Cal. Nov. 11, 2016) (where there is no governmental participant, that factor is “irrelevant”).

16 **f. The Reaction of the Class Members to the Proposed Settlement**

17 In determining the fairness of a settlement, the Court should consider class member objections
 18 to the settlement. The absence of a large number of objections to a proposed settlement raises a strong
 19 presumption that the terms of the agreement are fair. *See, e.g., Churchill Vill., L.L.C.*, 361 F.3d at 577
 20 (approving a settlement where “only 45 of the approximately 90,000 [.005 percent] notified class
 21 members objected to the settlement”); *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. at 321; *Nat’l*
 22 *Rural Telecomms. Coop.*, 221 F.R.D. at 529. As discussed, as of the date of this submission, no one
 23 has objected to the proposed Settlement. Wallace Decl. ¶ 8.

24 Moreover, as of the date of this submission, no class member has requested to opt out of the
 25 proposed Settlement. *Id.* Finally, notice was mailed and/or emailed to 5,779 potential members of the
 26 Damages Class. *Id.* ¶ 9. As of the date of this submission, 3,866 class members have submitted Claim
 27 Forms. The absence of opts outs, and the high claims rate, also indicate a favorable reaction by the
 28 class members to the proposed settlement, and provide further support for final approval. *See, e.g.,*

1 *Perkins v. LinkedIn Corp.*, No. 5:13-cv-04303-LHK, 2016 U.S. Dist. LEXIS 18649, at *9 (N.D. Cal.
 2 Feb. 16, 2016) (“low rates of objections and opt-outs are ‘indicia of the approval of the class’”)
 3 (citation omitted); *Dickey*, 2020 U.S. Dist. LEXIS 30440, at *17 (N.D. Cal. Feb. 21, 2020) (“[t]he
 4 27.4% claims rate is an excellent result in the Court’s experience” that supports final approval) (citing
 5 *In re TracFone Unlimited Serv. Plan Litig.*, 112 F. Supp. 3d 993, 1006 (N.D. Cal. 2015)). For these
 6 reasons, this factor also favors approval.

7 **B. The Proposed Service Awards Should Be Approved**

8 As discussed in Plaintiffs’ Motion for Service Awards (ECF No. 394) and the accompanying
 9 declarations, Plaintiffs request that this Court approve service awards to Class Representatives Abdul
 10 Nevarez, Priscilla Nevarez, and Sebastian DeFrancesco for their important and substantial
 11 contributions to the Plaintiff Classes with respect to both the litigation and settlement of this matter.
 12 As of the date of this submission, no one has objected to the proposed service awards. Wallace Decl. ¶
 13 8. Accordingly, for the reasons stated in their papers, Plaintiffs respectfully request that this Court
 14 grant the requested awards.

15 **C. Plaintiffs’ Motion for Reasonable Attorneys’ Fees, Costs and Litigation Expenses Should**
 16 **Be Approved**

17 Plaintiffs’ Motion for an Award of Reasonable Attorneys’ Fees, Costs and Expenses, and the
 18 points and authorities in support of their request, are the subject of separate submissions to the Court.
 19 In accordance with Section XIV.A of the Settlement Agreement, Plaintiffs seek an award of reasonable
 20 attorneys’ fees, costs and expenses in the amount of \$13,457,152.40.

21 As of the date of this submission, no class member has objected to the proposed award of
 22 attorneys’ fees, costs and litigation expenses since the Class Notice was disseminated. Wallace Decl.
 23 ¶ 8. As explained in Plaintiffs’ Motion Reasonable Attorneys’ Fees, Costs and Expenses, the relief
 24 obtained here constitutes a truly “excellent result” for the class and fully supports the requested award.
 25 Accordingly, Plaintiffs respectfully request that the Court grant the requested amount in full.

26 **IV. CONCLUSION**

27 For the reasons stated herein, Plaintiffs respectfully request that the Court (1) grant final
 28 approval of the Settlement Agreement; and (2) retain jurisdiction over the litigation and the Parties

1 throughout the term of the Settlement Agreement. By separate motions files concurrently herewith,
2 Plaintiffs also request that the Court grant service awards of \$5,000 to each of the three Class
3 Representatives, and award Class Counsel reasonable attorneys' fees, costs, and litigation expenses in
4 the amount of \$13,457,152.40, as set forth in the Settlement.

5 Dated: May 25, 2020

Respectfully submitted,

6 GOLDSTEIN, BORGEN, DARDARIAN & HO

7
8 /s/ Guy B. Wallace

Guy B. Wallace

9 *Attorneys for Plaintiffs and the Certified Classes*
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court for the United States District Court, Northern District of California, by using the Court's CM/ECF system on May 25, 2020.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the Court's CM/ECF system.

Dated: May 25, 2020

/s/ Guy B. Wallace
Guy B. Wallace

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