

1 HAMMONDLAW, P.C.
2 Julian Hammond (SBN 268489)
jhammond@hammondlawpc.com
3 Polina Brandler (SBN 269086)
pbrandler@hammondlawpc.com
4 Ari Cherniak (SBN 290071)
acherniak@hammondlawpc.com
5 Adrian Barnes (SBN (253131))
abarnes@hammondlawpc.com
6 1201 Pacific Ave, Suite 600
Tacoma, WA 98402
7 (310) 601-6766
(310) 295-2385 (Fax)

8 Attorneys for Plaintiffs and the Putative Class
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SANTA CLARA**
12

13 **RAKLY DOMINGUEZ and GRACE**
14 **DOMINGUEZ**, individually and on behalf of
all others similarly situated,

15 Plaintiffs,

16 vs.

17
18 **ALL-PRO BAIL BONDS, INC.**, a California
Corporation, **BANKERS INSURANCE**
19 **COMPANY**, A Florida Corporation, and
BANKERS SURETY SERVICES, INC., a
20 Florida Corporation,

21 Defendants.
22

Case No.: 21CV381890

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

Date: September 20, 2023

Time: 1:30 p.m.

Judge: Theodore C. Zayner

Dept.: 19

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION

Plaintiffs Rakly Dominguez and Grace Dominguez (“Plaintiffs”) seek final approval of the proposed \$2,300,000 non-reversionary class action settlement with Defendants All-Pro Bail Bonds, Inc. (“All-Pro”), Bankers Insurance Company, and Bankers Surety Services, Inc. (collectively “Defendants”). The proposed settlement consists of 33,792 Class Members defined as “non-spousal co-signers in California, who co-signed bail bond premium financing agreements with All-Pro prior to May 1, 2021, and upon which a payment was sought, made, or owed to All-Pro pursuant to the agreements” at any time between May 25, 2017, and April 24, 2023 (“Class Period”).

The response of the Class to the Settlement has been overwhelmingly positive. Only 6 Class Members opted out; and **no Class Member objected**. Declaration of Bryn Bridley With Respect to Settlement Administration and Class Notice (“Bridley Decl.”), filed herewith, ¶ 9.

Despite facing very real risks based on Defendants’ actual and potential defenses to the merits and to class certification, and the risk that Plaintiffs would be unable to collect any significant amounts even if they obtained a judgment, Plaintiffs obtained an excellent result, with an average payment per CM of \$41.82, and a high payment of \$943.66. Bridley Decl. ¶ 11.

Accordingly, Plaintiffs respectfully request that the Court grant final approval of the proposed Settlement.

II. OVERVIEW OF THE SETTLEMENT

The Settlement resolves all claims of Plaintiffs and the proposed Class alleged in the operative Complaint. The Gross Settlement Amount (“GSA”) is \$2,300,000, and is non-reversionary. Settlement Agreement (“SA”) § 2.15. The Net Settlement Amount (“NSA”) – the amount remaining of the GSA after deductions of attorneys’ fees, costs, service awards, and settlement administration costs – will total approximately \$1,413,534.44. Bridley Decl. ¶ 10. The average payment per CM is \$41.82 and the highest payment is \$943.66. *Id.* ¶ 11. In addition, All-Pro agrees that it will be subject to a stipulated permanent injunction enjoining it, and persons or entities acting in concert with it, from the Effective Date onwards, from collecting from all non-spouse co-signers any outstanding installment premium payments remaining due and owing on All-Pro Agreements executed prior to May 1, 2021. SA § 3.21. Plaintiffs estimate the injunctive relief has an estimated value of \$21.5 million. Declaration of Julian Hammond In Support of Final Approval and Fees, Costs, and Service Awards (“Hammond Final Decl.”), filed herewith, ¶ 5 & fn.

2.
///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III. OVERVIEW OF NOTICE ADMINISTRATION

Pursuant to the Preliminary Approval Order, Defendants provided the Settlement Administrator with the name, address Event number, agreement date, payment amount, and total number of individuals associated with the payment of each event for 36,625 non-spouse co-signors that signed an All-Pro Surety Bail Bond Indemnity Agreement and an All-Pro Promissory Note for Surety Bail Bond. Bridley Decl. ¶ 4. The Settlement Administrator and Defense Counsel worked together to identify and resolve items of question in the Class List. *Id.* The final Class List included 33,798 unique Class Members. After updating mailing addresses, the Settlement Administrator mailed the Court-approved Notice Packet via first-class mail to the Class. *Id.* ¶ 5-6. A total of 7,307 Notices were returned after mailing. *Id.* ¶ 7. Atticus promptly remailed the Notices returned with a forwarding address, and performed an advanced address search on the remaining returned Notices. Ultimately, 3,612 Notices were undeliverable. *Id.* The Settlement Administrator will perform another address search on the undeliverable Notices prior to sending settlement payments to those Class Members whose Notices were undeliverable. *Id.*

As a result of these diligent efforts, Notice was delivered to 30,186 Class Members, or 89.3% of the Class, making the notice program a success. Bridley Decl. ¶ 8. *See* Federal Judicial Center, *Judge’s Class Action Notice and Claims Process Checklist and Plain Language Guide 3* (2010), (“The lynchpin in an objective determination of the adequacy of a proposed notice effort is whether all the notice efforts together will reach a high percentage of the class. It is reasonable to reach between 70-95%. A study of recent published decisions showed that the median reach calculation on approved notice plans was 87%.”).

The Notices provided CMs with directions on how to opt out of the Settlement and the deadline to do so. Only 6 of 33,798 CMs opted out. Bridley Decl. ¶ 9. No Class Member objected. *Id.*

IV. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT

A. Legal Standard for Granting Final Approval

Court approval is required for the settlement of a class action. *See* Cal. Rule of Court 3.769. The Court has broad discretion in reviewing a proposed class settlement for approval, which may be reversed only upon a strong showing of clear abuse of discretion. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 234-35 (2001); *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 127-28 (2008).

This Court now must make a final determination of whether the proposed Settlement Agreement is fair, reasonable, and adequate. *See Officers for Justice v. Civil Serv. Comm’n. of the City & Cnty. of S.F.*, 688 F.2d 615, 625 (9th Cir. 1982); Manual for Complex Litigation (4th ed. 2004) (hereinafter “Manual”) § 21.61 at 308. Final approval is warranted when “the interests of the class are better served

1 by the settlement than by further litigation.” Manual § 21.61 at 309. The law favors settlement,
2 particularly in class actions where substantial resources can be conserved by avoiding the time, cost, and
3 rigors of formal litigation. *See, e.g., 7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal.
4 App. 4th 1135, 1151 (2000) (“7-11”); *Neary v. Regents of Univ. of Cal.*, 3 Cal. 4th 273, 277-281 (1992);
5 *Lealao v. Beneficial Cal., Inc.*, 82 Cal. App. 4th 19, 52 (2000) (California Supreme Court “has placed an
6 extraordinarily high value on settlement”); 4 Newberg on Class Actions (4th ed. 2002) § 11.41.

7 In analyzing whether a settlement is fair and reasonable, courts consider a number of factors,
8 including: (1) the amount offered in settlement; (2) the risk, expense, complexity, and likely duration of
9 further class action litigation; (3) the extent of discovery completed and the stage of the proceedings; (4)
10 the experience and view of counsel, and (5) the reaction of the Class to the proposed settlement. *Dunk*
11 *v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996); *Kullar*, 168 Cal. App. 4th at 133 (court must be
12 provided with information about nature and magnitude of claims and the basis for concluding that
13 consideration being paid represents reasonable compromise); *Clark v. Am. Residential Services, LLC*,
14 175 Cal. App. 4th 785, 790, 802-03 (2009).

15 The Court’s role is limited to making a reasoned judgment that the proposed class settlement
16 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties,
17 and that the settlement as a whole is fair, reasonable, and adequate to the Class. *See* Manual § 21.61 at
18 309. “[T]he settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the
19 merits.” 7-11, 85 Cal. App. 4th at 1145 (citation omitted). Rather, “[d]ue regard should be given to what
20 is otherwise a private consensual agreement between the parties.” *Dunk*, 48 Cal. App. 4th at 1801.

21 **B. The Settlement Terms Are Presumptively Fair Based on the Settlement Process and**
22 **Overwhelming Support by Class Members**

23 A settlement agreement is presumptively fair when it is (1) the product of arm’s-length
24 bargaining; (2) supported by sufficient investigation or discovery to allow assessment of plaintiff’s
25 claims; (3) supported by experienced counsel; and (4) subject to only a small percentage of objections.
26 *See Dunk*, 48 Cal. App. 4th at 1802; 7-11, 85 Cal. App. 4th at 1146. As described in detail in Plaintiffs’
27 preliminary approval papers, this Settlement satisfies the first three factors, and following completion of
28 the notice process, the fourth factor is now also satisfied. The settlement, therefore, is presumptively fair
and reasonable.

First, the settlement was reached after a full-day mediation led by an experienced and highly
respected mediator, Brude Friedman. Hammond Final Decl. ¶ 23. *Second*, Class Counsel engaged in
substantial investigation and informal discovery prior to participating in mediation. Defendant produced

1 highly relevant class documents and data including: (a) information and underlying data regarding
2 payments made to All-Pro during the Class Period by Class Members on bail bond premium financing
3 agreements entered into with All-Pro; (b) information and underlying data regarding payments made to
4 third-party collection agencies during the Class Period by Class Members on bail bond premium
5 financing agreements entered into with All-Pro; (c) information and underlying data regarding current
6 balances payable to All-Pro on bail bond premium financing agreements entered into by Class Members
7 with All-Pro during the Class Period; (d) information and underlying data regarding current balances
8 payable to third-party collection agencies on bail bond premium financing agreements entered into by
9 Class Members with All-Pro during the Class Period; (e) information regarding small claims default
10 judgments awarded to All-Pro between May 2017 and the mediation; (f) information regarding accounts
11 where garnishment was enforced and payments received by All-Pro between May 2017 and the
12 mediation; and (g) the Supervising Producer Agreement between All-Pro and Defendants Bankers
13 Insurance Company and Bankers Surety Services, Inc. Hammond Final Decl. ¶ 20.

12 Plaintiffs' counsel also conducted their own investigation, gathering additional documents and
13 information including exemplars of All-Pro's promissory notes for surety bail bonds entered into by non-
14 spousal co-signers during the Class Period, exemplars of All-Pro's surety bail bond indemnity agreements
15 executed by non-spousal co-signers during the Class Period, reports and research papers regarding the
16 operation of the bail bond industry, documents regarding the respective organizational structures of
17 Defendants and the relationships between them, and corporate documents filed by Defendants with the
18 California and Florida Secretaries of State, respectively. Hammond Final Decl. ¶ 21.

18 *Third*, Class Counsel is experienced in class action litigation having been approved as adequate
19 counsel or co-class counsel in numerous class actions. Hammond Final Decl., **Exhibit 1**.

20 *Fourth*, only 6 of 33,798 Class Members, or 0.01% of the Class, opted out; and no Class Member
21 objected. Bridley Decl. ¶ 9. This is a far smaller percentage than in *7-11*, where 1.5% of the Class opted
22 out, and 0.1% objected, and where the Court found that "the response of the absent class members to the
23 proposed settlement...was overwhelmingly positive." 85 Cal. App. 4th at 1152-53. The Settlement is
24 thus presumptively fair, reasonable, and adequate, and should be finally approved.

24 **C. The Settlement Terms Provide Benefits to the Class That Are Demonstrably Fair,**
25 **Reasonable and Adequate in Relation to the Potential Benefits and Risks of Further**
26 **Litigation.**

26 The Court should also grant final approval of the Settlement based on the following factors which
27 evidence the fairness, reasonableness, and adequacy of the Settlement: (1) the value of the settlement; (2)
28 the risks inherent in continued litigation; (3) the extent of discovery completed and the stage of the

1 proceedings when settlement was reached; (4) the complexity, expense, and likely duration of the
2 litigation in the absence of settlement; (5) the experience and views of class counsel; and (6) the reaction
3 of the class members. *See Wershba*, 91 Cal. App. 4th at 244-45; *Dunk*, 48 Cal. App. 4th at 1801.

4 **1. The Value of the Settlement Considered Against the Risks in Continued
Litigation**

5 The first two elements for determining whether a settlement is fair, reasonable, and adequate are
6 the amount offered in the settlement and the risk, expense, complexity, and likely duration of further class
7 action litigation. Both of these factors support approving the Settlement.

8 The Settlement is an excellent result for CMs when considering that the \$2.3 million Gross
9 Settlement Amount and \$21.5 million in injunctive relief provided for in the Settlement Agreement
10 represent 41% of Defendants' maximum exposure and 78% of Defendants' realistic exposure. Hammond
11 Final Decl. ¶ 55.

12 If the Parties continued to litigate this case, the trial court would rule on a number of issues
13 including (a) whether the exclusive remedy for a violation of Civil Code § 1799.91 is provided in §
14 1799.95, meaning that there is no basis for Plaintiffs and Class Members to seek restitution for payments
15 already made on their All-Pro agreements, unless All-Pro collected money from them as a result of legal
16 action; (b) whether the initial payments or down payments made by CMs are part of any consumer credit
17 contract entered into by Class Members because they were not amounts agreed to be paid on "a deferred
18 payment basis" as defined under § 1799.90(a); and (c) whether All-Pro could receive an offset against
19 any benefit received by Class Members under the bail bonds contract. Hammond Final Decl. ¶ 8.
20 Regardless of the outcome at trial, the losing party would likely appeal, given that some of these issues
21 have been conclusively addressed by an appellate court.

22 As to class certification, All-Pro could have argued that in many instances, it is impossible to
23 determine whether payments on the All-Pro agreements were made by Class Members or by other
24 individuals, and a court might determine that individual issues regarding the fact and extent of the harm
25 actually suffered by specific Class Members would predominate and a class should not be certified.
26 Hammond Final Decl. ¶ 9.

27 There was also the risk posed by Bankers Insurance Company's and Bankers Surety Services,
28 Inc.'s contentions that Bankers Insurance Company, as a surety on bail bonds issued by All-Pro, and
Bankers Surety Services, Inc., an internal general agency for Bankers Insurance Company, do not control
or participate in any way in any extension of credit for any remaining premium due to All-Pro from those

1 who secure bail bonds from All-Pro, and are not liable for any failure by All-Pro to provide any required
2 notice under California Civil Code § 1799.91 to non-spousal co-signers. Hammond Final Decl. ¶ 10.

3 Finally, even if Plaintiffs obtained a judgment, recent legislative and policy developments in
4 California significantly reduced All-Pro's revenues over the past two years, and proposed legislation and
5 trends in bail practice would potentially further reduce All-Pro's revenues over the next several years,
6 which raised the possibility that Plaintiffs would be unable to collect any significant amount. Hammond
7 Final Decl. ¶ 8(d).

8 The significant and immediate relief provided by this Settlement, and the risks presented by
9 Defendants' defenses and the inherent uncertainties of continued litigation, justify final approval.

10 **2. Plaintiffs Conducted Thorough Investigation and Discovery**

11 Plaintiffs conducted a thorough investigation, including reviewing and analyzing highly relevant
12 class data provided by Defendant and performing their own investigation . Hammond Final Decl. ¶¶ 20-
13 21. Thus, Plaintiffs were adequately informed to make the decision to settle this case on the proposed
14 terms. Further, the Settlement was reached through arm's-length settlement negotiations after a full-day
15 mediation with experienced mediator Bruce Friedman. *Id.* ¶ 23.

16 **3. Class Counsel's Experience and Views Favor Final Approval**

17 As discussed above, Class Counsel is highly experienced and has a successful track record in
18 handling class actions. Hammond Final Decl. ¶¶ 28-31. Class Counsel believes the Settlement is fair,
19 reasonable, and adequate, and in the best interests of each Class. The endorsement of qualified and well-
20 informed counsel regarding the settlement as fair is entitled to significant weight in the final approval
21 process. *See Dunk*, 48 Cal. App. 4th at 1802.

22 **4. Class Members' Positive Reaction to the Settlement Favors Approval**

23 The final element of a fair, reasonable, and adequate settlement is a positive reaction by the Class
24 to the settlement's terms. The overwhelmingly positive response of the Class to the Settlement here
25 strongly favors final approval. As discussed above, only 0.01% of CMs (6 out of 33,798) have opted out.
26 Bridley Decl. ¶ 9. No Class Member submitted an objection. *Id.*; *see 7-11*, 85 Cal. App. 4th at 1152-53
27 (1.5% opt-out rate and 0.1% objection rate supported final approval); *Nat'l Rural Telecomm. Cooperative*
28 *v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004) (“[T]he absence of a large number of objections
to a proposed class action settlement raises a strong presumption that the terms of a proposed class action
settlement are favorable to the class members.”). This positive response indicates nearly universal
acceptance of the Settlement's terms by the Class and supports approval of the Settlement.

///

V. CONCLUSION

Because the Settlement provides benefits that are demonstrably fair in relation to the risks of continued litigation, is supported by a robust evidentiary record, is endorsed by counsel with extensive experience in wage and hour litigation, and is overwhelmingly supported by the Class, Plaintiffs respectfully request that the Court grant final approval of the Settlement as fair, reasonable, and adequate.

DATED: August 28, 2023

Respectfully submitted,

s/ Julian Hammond
Julian Hammond
Attorneys for Plaintiffs and the Putative Class