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Attorneys for Plaintiff

10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA

12 DARREN MILLAM on behalf of
 13 himself and those similarly situated,
 14 Plaintiff,
 15 v.
 16 WALMART INC.,
 17 Defendant.

Case No.: 5:22-cv-01090-SSS-SP
 PLAINTIFF’S RENEWED REQUEST
 FOR DISMISSAL

1 Plaintiff respectfully requests that the Court dismiss his individual claims
2 with prejudice, and dismiss the putative class claims without prejudice, without
3 requiring notice to absent class members.

4 When reviewing a class action pre-certification dismissal or compromise, a
5 district court may “ensure that the representative plaintiff fulfills his fiduciary
6 duty toward the absent class members, and therefore must inquire into the terms
7 and circumstances of any dismissal or compromise to ensure that it is not
8 collusive or prejudicial.” *Diaz v. Trust Territory of the Pacific Islands*, 876 F.2d
9 1401, 1498 (9th Cir. 1989). Specifically, “the district court should inquire into
10 possible prejudice from (1) class members’ possible reliance on the filing of the
11 action if they are likely to know of it either because of publicity or other
12 circumstances, (2) lack of adequate time for class members to file other actions,
13 because of a rapidly approaching statute of limitations, (3) any settlement or
14 concession of class interests made by the class representative or counsel in order
15 to further their own interests.” *Id.* Here, an analysis of the *Diaz* factors confirms
16 that absent class members will suffer no prejudice from the dismissal of this
17 action.

18 The first *Diaz* factor weighs in favor of the Court approving dismissal
19 because it is unlikely that putative class members have relied on this action to
20 vindicate their own rights. There is no evidence that unnamed class members
21 relied on this lawsuit at all, much less to their detriment, such that they will be
22 prejudiced by the dismissal. *See Rodriguez v. Nationwide Mut. Ins. Co.*, 2017 WL
23 7803796, at *3 (C.D. Cal. Nov. 16, 2017) (“The Parties state that they are
24 ‘unaware of any media attention’ given to this case Because it is unlikely that
25 any putative class members have relied on this suit, this factor favors dismissal.”);
26 *Lyons v. Bank of Am., NA.*, No. C 11-1232 CW, 2012 U.S. Dist. LEXIS 168230,
27 at *2 (N.D. Cal. Nov. 27, 2012) (“The Court agrees that this apparent lack of
28 media coverage makes it unlikely that similarly situated homeowners knew of

1 Plaintiffs’ lawsuit and relied on it for vindication of their own rights.”) There is
2 consequently minimal risk that absent potential class members will be prejudiced
3 due to reliance on this action, and the first *Diaz* factor therefore weighs in favor of
4 approving dismissal. *See Gonzalez v. Fallanghina, LLC*, No. 16-CV-01832-MEJ,
5 2017 WL 1374582, at *5 (N.D. Cal. Apr. 17, 2017) (finding it unlikely putative
6 class members relied on the plaintiff’s class claims given lack of significant media
7 coverage of case).

8 The second *Diaz* factor also suggests no prejudice to potential class
9 members, because there is no “rapidly approaching statute of limitations” that
10 could bar such putative class members’ individual claims. *See Tomblin v. Wells*
11 *Fargo Bank, N.A.*, No. 13-cv-04567-JD, 2014 U.S. Dist. LEXIS 145556, at *2
12 (N.D. Cal. Oct. 10, 2014). Here, to the extent any member of the potential class
13 has a viable claim, there is also no reason to believe that such claim would be lost
14 as a result of dismissing the named Plaintiff’s individual claims.

15 Third, dismissal of this action would not concede or otherwise adversely
16 impact absent potential class members’ individual claims, since Plaintiff requests
17 only that the putative class claims be dismissed without prejudice. Therefore,
18 unnamed class members will not be prejudiced by a dismissal of this action, with
19 prejudice, as to the named Plaintiff, and a dismissal of this action, without
20 prejudice, as to pending class claims of potential class members. Thus, the third
21 *Diaz* factor weighs in favor of the Court approving dismissal.

22 Here, since each of the *Diaz* factors demonstrates that potential class
23 members will not be prejudiced by the Parties’ settlement for the reasons set forth
24 above, and because notifying unidentified class members would be unnecessarily
25 burdensome and costly, the Court should approve dismissal of this action without
26 requiring notice to the putative class.

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1 Dated: October 5, 2022

GUTRIDE SAFIER LLP

2 /s/Seth Safier/s/

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