UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

MIGUEL ANGEL SERRANO CASTILLO, as an individual and on behalf of all others similarly situated,

Plaintiffs,

vs.

SHERATON OPERATING CORPORATION, a Delaware Corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No. 2:17-cv-07091 FMO (ASx)

AMENDED ORDER RE: MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT

Having reviewed and considered all the briefing filed with respect to the parties' Motion for Preliminary Approval of Class Action Settlement (Dkt. 29, "Motion"), the oral argument presented at the hearing on August 9, 2018, and the Stipulation to Modify the Court's Order Re: Motion for Preliminary Approval of Class Settlement; the court concludes as follows.

BACKGROUND

On September 26, 2017, Miguel Angel Serrano Castillo ("Castillo" or "plaintiff") filed a class action complaint against Sheraton Operating Corporation, ("Sheraton" or "defendant"), asserting a cause of action for violation of California Labor Code § 226. (See Dkt. 2, First Amended Complaint at ¶¶ 30-32).[1] Plaintiff subsequently filed the operative complaint, the Second Amended Complaint ("SAC"), which added a claim under the California Private Attorneys General Act ("PAGA"), Cal. Labor Code §§ 2698, et seq. (See Dkt. 20, SAC at ¶¶ 33-36).

After engaging in discovery and a mediation before an experienced mediator of wage and hour class actions, the parties reached a settlement in April 2018. (See Dkt. 29-1, Declaration of Edward W. Choi ("Choi Decl.") at ¶¶ 7-9). Plaintiff filed a Motion, seeking an order: (1) certifying the proposed class for settlement purposes; (2) preliminarily approving the Settlement Agreement; (3) appointing Phoenix Settlement Administrators as the Settlement Administrator and Larry Lee of Diversity Law Group, Edward W. Choi of the Law Offices of Choi & Associates, and David Lee of David Lee Law as class counsel; (4) approving the notice documents and directing dissemination of the class notice; and (5) scheduling a final approval hearing. (See Dkt. 29, Motion at 2; Dkt. 29-6, Proposed Order Granting Plaintiff's Motion [] at 1-6). On February 4, 2019, the Court issued an Order Granting Motion for Preliminary Approval of Class Settlement, approving the original Joint Stipulation and Class Action Settlement Agreement and Release. (Dkt. 36). On April 5, 2019, the Parties filed an Amended Joint Stipulation and Class Action Settlement Agreement and Release

[1] Plaintiff filed the initial and First Amended Complaint on the same day.

("Amended Settlement Agreement") along with Stipulation to Modify the Court's Order re: Motion for Preliminary Approval of Class Settlement ("Stipulation"). (Dkt. 37).

The parties have defined the settlement class as "all persons who are employed or have been employed by Defendant as a non-exempt employee in California from September 26, 2016, to the date of preliminary approval, or July 16, 2018, whichever is earlier, who based on Defendant's available records received a paper pay summary that reflected either overtime or shift differential pay." (Dkt. 37, Exh. A, Amended Settlement Agreement at § 1.2). Sheraton will pay a "Gross Settlement Amount" of $1,535,129.00, which includes payments to all class members, attorney's fees and costs, the class representative service award, expenses for the administration of the settlement, and the PAGA payment to the California Labor & Workforce Development Agency ("the LWDA"). (See id. at § 1.15). The entire Gross Settlement Amount will be disbursed pursuant to the settlement. (See id.).

The "Net Settlement Amount" is the amount remaining after payments to class counsel, the class representative, the settlement administrator, and the LWDA. (See Dkt. 37, Exh. A, Amended Settlement Agreement at § 1.18). Under the Amended Settlement Agreement, class members' Settlement Shares are determined according to the following formula: "by dividing the number of pay periods in which a paper pay summary was received [by the class member] . . . that included a payment for overtime and/or shift differential wages . . . by all pay periods in which Paper Pay Summaries were received by Class Members during the Class Period, multiplied by the NSA." (Id. at § 5.1.1.1).

Pursuant to the settlement, class counsel will file a motion for attorney's fees of no more than $400,000, or approximately 26 percent, of the Gross Settlement Amount and costs and expenses not to exceed $25,000. (See Dkt. 37, Exh. A, Amended Settlement Agreement at § 6). In addition, the motion will seek up to $7,500 in an incentive award for the named plaintiff. (See id. at § 7).

LEGAL STANDARD

"[I]n the context of a case in which the parties reach a settlement agreement prior to class certification, courts must peruse the proposed compromise to ratify both the propriety of the certification and the fairness of the settlement." Staton v. Boeing Co., 327 F.3d 938, 952 (9th Cir. 2003).

I. CLASS CERTIFICATION.

At the preliminary approval stage, the court "may make either a preliminary determination that the proposed class action satisfies the criteria set out in Rule 23 or render a final decision as to the appropriateness of class certification."[2] Smith v. Wm. Wrigley Jr. Co., 2010 WL 2401149, *3 (S.D. Fla. 2010) (internal citation omitted); see also Sandoval v. Roadlink USA Pac., Inc., 2011 WL 5443777, *2 (C.D. Cal. 2011) (citing Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 620, 117 S.Ct. 2231, 2248 (1997)) ("Parties seeking class certification for settlement purposes must satisfy the requirements of Federal Rule of Civil Procedure 23[.]"). "A court considering such a request should give the Rule 23 certification factors 'undiluted, even heightened, attention in the settlement context.'" Sandoval, 2011 WL 5443777, at *2 (quoting Amchem, 521 U.S. at 620, 117 S.Ct. at 2248). "Such attention is of vital importance, for a court asked to certify a settlement class will lack the opportunity, present when a case is litigated, to adjust the class, informed by the proceedings as they unfold." Amchem, 521 U.S. at 620, 117 S.Ct. at 2248.

A party seeking class certification must first demonstrate that: "(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a).

[2] All "Rule" references are to the Federal Rules of Civil Procedure.

"Second, the proposed class must satisfy at least one of the three requirements listed in Rule 23(b)." Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 345, 131 S.Ct. 2541, 2548 (2011). Rule 23(b) is satisfied if:

(1) prosecuting separate actions by or against individual class members would create a risk of:

(A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or

(B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests;

(2) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole; or

(3) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:

(A) the class members' interests in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already begun by or against class members;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

(D) the likely difficulties in managing a class action.

Fed. R. Civ. P. 23(b)(1)-(3).

The party seeking class certification bears the burden of demonstrating that the proposed class meets the requirements of Rule 23. See Dukes, 564 U.S. at 350, 131 S.Ct. at 2551 ("A party seeking class certification must affirmatively demonstrate his compliance with the Rule – that is, he must be prepared to prove that there are in fact sufficiently numerous parties, common questions of law or fact, etc."). However, courts need not consider the Rule 23(b)(3) issues regarding manageability, as settlement obviates the need for a manageable trial. See Morey v. Louis Vuitton N. Am., Inc., 2014 WL 109194, *12 (S.D. Cal. 2014) ("[B]ecause this certification of the Class is in connection with the Settlement rather than litigation, the Court need not address any issues of manageability that may be presented by certification of the class proposed in the

Settlement Agreement."); Rosenburg v. I.B.M., 2007 WL 128232, *3 (N.D. Cal. 2007) (discussing "the elimination of the need, on account of the Settlement, for the Court to consider any potential trial manageability issues that might otherwise bear on the propriety of class certification").

II. FAIRNESS OF CLASS ACTION SETTLEMENT.

Rule 23 provides that "the claims, issues, or defenses of a certified class may be settled. . . only with the court's approval." Fed. R. Civ. P. 23(e). "The primary concern of [Rule 23(e)] is the protection of th[e] class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties." Officers for Justice v. Civil Serv. Comm'n of the City & Cnty. of S.F., 688 F.2d 615, 624 (9th Cir. 1982), cert. denied, 459 U.S. 1217 (1983). Accordingly, a district court must determine whether a proposed class action settlement is "fundamentally fair, adequate, and reasonable." Staton, 327 F.3d at 959; see Fed. R. Civ. Proc. 23(e). Whether to approve a class action settlement is "committed to the sound discretion of the trial

judge." Class Plaintiffs v. City of Seattle, 955 F.2d 1268, 1276 (9th Cir.), cert. denied, Hoffer v. City of Seattle, 506 U.S. 953 (1992) (internal quotation marks and citation omitted).

"If the [settlement] proposal would bind class members, the court may approve it only after a hearing and on finding that it is fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). "[S]ettlement approval that takes place prior to formal class certification requires a higher standard of fairness [given t]he dangers of collusion between class counsel and the defendant, as well as the need for additional protections when the settlement is not negotiated by a court designated class representative[.]" Hanlon v. Chrysler Corp., 150 F.3d 1011, 1026 (9th Cir. 1998). As the Ninth Circuit has observed, "[p]rior to formal class certification, there is an even greater potential for a breach of fiduciary duty owed the class during settlement. Accordingly, such agreements must withstand an even higher level of scrutiny for evidence of collusion or other conflicts of interest than is ordinarily required under Rule 23(e) before securing the court's approval as fair." In re Bluetooth Headset Prods. Liab. Litig., 654 F.3d 935, 946 (9th Cir. 2011).

Approval of a class action settlement requires a two-step process – a preliminary approval followed by a later final approval. See Tijero v. Aaron Bros., Inc., 2013 WL 60464, *6 (N.D. Cal. 2013) ("The decision of whether to approve a proposed class action settlement entails a two-step process."); West v. Circle K Stores, Inc., 2006 WL 1652598, *2 (E.D. Cal. 2006) ("[A]pproval of a class action settlement takes place in two stages."). At the preliminary approval stage, the court "evaluate[s] the terms of the settlement to determine whether they are within a range of possible judicial approval." Wright v. Linkus Enters., Inc., 259 F.R.D. 468, 472 (E.D. Cal. 2009). Although "[c]loser scrutiny is reserved for the final approval hearing[,]" Harris v. Vector Mktg. Corp., 2011 WL 1627973, *7 (N.D. Cal. 2011), "the showing at the preliminary approval stage – given the amount of time, money and resources involved in, for

example, sending out new class notices –should be good enough for final approval." Spann v. J.C. Penney Corp., 314 F.R.D. 312, 319 (C.D. Cal. 2016). "At this stage, the court may grant preliminary approval of a settlement and direct notice to the class if the settlement: (1) appears to be the product of serious, informed, non-collusive negotiations; (2) has no obvious deficiencies; (3) does not improperly grant preferential treatment to class representatives or segments of the class; and (4) falls within the range of possible approval." Id. (internal quotation marks omitted); Harris, 2011 WL 1627973, at *7 (same); Cordy v. USS-Posco Indus., 2013 WL 4028627, *3 (N.D. Cal. 2013) ("Preliminary approval of a settlement and notice to the proposed class is appropriate if the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval.") (internal quotation marks omitted).

DISCUSSION

I. CLASS CERTIFICATION.

A. Rule 23(a) Requirements.

1. Numerosity.

The first prerequisite of class certification requires that the class be "so numerous that joinder of all members is impractical[.]" Fed. R. Civ. P. 23(a)(1). Although impracticability does not hinge only on the number of members in the putative class, joinder is usually impracticable if a class is "large in numbers." See Jordan v. Cnty. of L.A., 669 F.2d 1311, 1319 (9th Cir.), vacated on other grounds, 459 U.S. 810 (1982) (class sizes of 39, 64, and 71 are sufficient to satisfy the numerosity requirement). "As a general matter, courts have found that numerosity is satisfied when class size exceeds 40 members, but not satisfied when membership dips below 21." Slaven v. BP Am., Inc., 190 F.R.D. 649, 654 (C.D. Cal. 2000); see Tait v. BSH Home Appliances Corp., 289 F.R.D. 466, 473 (C.D. Cal. 2012) ("A proposed class of at least forty members presumptively satisfies the numerosity requirement.").

Here, the settlement class includes an estimated 4,561 members, (see Amended Settlement Agreement at § 21), which easily exceeds the minimum threshold for numerosity.

2. Commonality.

The commonality requirement is satisfied if "there are common questions of law or fact common to the class[.]" Fed. R. Civ. P. 23(a)(2). Commonality requires plaintiff to demonstrate that his claims "depend upon a common contention . . . [whose] truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." Dukes, 564 U.S. at 350, 131 S.Ct. at 2551; see Wolin v. Jaguar Land Rover N. Am., LLC, 617 F.3d 1168, 1172 (9th Cir. 2010) (The commonality requirement demands that "class members' situations share a common issue of law or fact, and are sufficiently parallel to insure a vigorous and full presentation of all claims for relief.") (internal quotation marks omitted). "The plaintiff must demonstrate the capacity of classwide proceedings to generate common answers to common questions of law or fact that are apt to drive the resolution of the litigation." Mazza v. Am. Honda Motor Co., 666 F.3d 581, 588 (9th Cir. 2012) (internal quotation marks omitted). "This does not, however, mean that every question of law or fact must be common to the class; all that Rule 23(a)(2) requires is a single significant question of law or fact." Abdullah v. U.S. Sec. Assocs., Inc., 731 F.3d 952, 957 (9th Cir. 2013), cert. denied, 135 S.Ct. 53 (2014) (emphasis and internal quotation marks omitted); see Mazza, 666 F.3d at 589 (characterizing commonality as a "limited burden[,]" stating that it "only requires a single significant question of law or fact"). Proof of commonality under Rule 23(a) is "less rigorous" than the related preponderance standard under Rule 23(b)(3). See Mazza, 666 F.3d at 589. "The existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class." Hanlon, 150 F.3d at 1019.

This case involves common class-wide issues that are apt to drive the resolution of plaintiff's claims. Specifically, there is a significant common question as to whether

defendant's wage statements were compliant with California law. (See Dkt. 29-1, Choi Decl. at ¶ 12); see, e.g., Clesceri v. Beach City Investigations & Protective Servs., Inc., 2011 WL 320998, *5 (C.D. Cal. 2011) (finding commonality requirement met for preliminary approval because "the settlement class members did not receive proper rest breaks; [] the settlement class members did not receive proper meal breaks; [] the settlement class members did not receive adequate wage statements in compliance [with California law]").

3. Typicality.

"Typicality refers to the nature of the claim or defense of the class representative, and not to the specific facts from which it arose or the relief sought." Ellis v. Costco Wholesale Corp., 657 F.3d 970, 984 (9th Cir. 2011) (internal quotation marks and citation omitted). To demonstrate typicality, plaintiffs' claims must be "reasonably co-extensive with those of absent class members[,]" although "they need not be substantially identical." Hanlon, 150 F.3d at 1020; see Ellis, 657 F.3d at 984 ("Plaintiffs must show that the named parties' claims are typical of the class."). "The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiff[], and whether other class members have been injured by the same course of conduct." Ellis, 657 F.3d at 984 (internal quotation marks and citation omitted).

Here, the claims of the named plaintiff are typical of the claims of the class. Like the putative class members, plaintiff was employed by defendant in a non-exempt position during the relevant time period, and his claims arise from the same factual basis and are based on the same legal theories, i.e., defendant violated California labor law by failing to provide plaintiff with proper wage statements. (See Dkt. 29-4, Declaration of Miguel Angel Serrano Castillo ("Castillo Decl.") at ¶¶ 2; Dkt. 35-2, Supplemental Declaration of Miguel Angel Castillo ("Castillo Supp. Decl.") at ¶¶ 2-3; Dkt. 29-1, Choi Decl. at ¶ 3-4). Finally, the court is not aware of any facts that would

subject the class representative "to unique defenses which threaten to become the focus of the litigation." Hanon v. Dataproducts Corp., 976 F.2d 497, 508 (9th Cir. 1992).

4. Adequacy of Representation.

"The named Plaintiff[] must fairly and adequately protect the interests of the class." Ellis, 657 F.3d at 985 (citing Fed. R. Civ. P. 23(a)(4)). "To determine whether [the] named plaintiff[] will adequately represent a class, courts must resolve two questions: (1) do[es] the named plaintiff[] and [his] counsel have any conflicts of interest with other class members and (2) will the named plaintiff[] and [his] counsel prosecute the action vigorously on behalf of the class?" Id. (internal quotation marks omitted). "Adequate representation depends on, among other factors, an absence of antagonism between representatives and absentees, and a sharing of interest between representatives and absentees." Id.

The proposed class representative does not appear to have any conflicts of interest with the absent class members, especially given that he has no individual claims separate from the class claims. As plaintiff states, "there are no conflicts which exist between [his] interest in this action and the interests of the class members[.]" (See Dkt. 29-4, Castillo Decl. at ¶ 3). Castillo "brought this action as a class action instead of an individual action so that the class would be able to benefit from this case." (Id. at ¶ 7). In short, "[t]he adequacy-of-representation requirement is met here because Plaintiff[] ha[s] the same interests as the absent Class Members[.]" Barbosa v. Cargill Meat Sols. Corp., 297 F.R.D. 431, 442 (E.D. Cal. 2013). "Further, there is no apparent conflict of interest between the named Plaintiff['s] claims and those of the other Class Members'[sic] – particularly because the named Plaintiff[] ha[s] no separate and individual claims apart from the Class." Id.

Finally, plaintiff's counsel request, and the Amended Settlement Agreement provides, that the court appoint as class counsel Larry Lee of Diversity Law Group, Edward W. Choi of the Law Offices of Choi & Associates, and David Lee of David Lee Law as class counsel. (See Amended Settlement Agreement at § 1.3). Choi states

that he and his firm have "primarily represented consumers" and that he has "handled numerous wage and hour cases during [his] career." (Dkt. 29-1, Choi Decl. at ¶ 16). He has been appointed as class counsel in numerous cases. (See id.). Similarly, David Lee has "handled a number of class actions and individual actions," (see Dkt. 29- 3, Declaration of David J. Lee at ¶ 7), and Larry Lee has "been approved as Class Counsel in a number of class actions[.]" (See Dkt. 29-2, Declaration of Larry W. Lee at ¶ 9). Based on the foregoing, the court finds that plaintiff's counsel are competent, and that the adequacy of representation requirement is satisfied. See Barbosa, 297 F.R.D. at 443 ("There is no challenge to the competency of the Class Counsel, and the Court finds that Plaintiffs are represented by experienced and competent counsel who have litigated numerous class action cases.").

B. Rule 23(b) Requirements.

Certification under Rule 23(b)(3) is proper "whenever the actual interests of the parties can be served best by settling their differences in a single action." Hanlon, 150 F.3d at 1022 (internal quotation marks omitted). The rule requires two different inquiries, specifically a determination as to whether (1) "questions of law or fact common to class members predominate over any questions affecting only individual members[;]" and (2) "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3); see Spann, 314 F.R.D. at 321-22.

1. Predominance.

"The Rule 23(b)(3) predominance inquiry tests whether [the] proposed classes are sufficiently cohesive to warrant adjudication by representation." Amchem, 521 U.S. at 623, 117 S.Ct. at 2249. "Rule 23(b)(3) focuses on the relationship between the common and individual issues. When common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication, there is clear justification for handling the dispute on a representative rather than on an individual basis." Hanlon, 150 F.3d at 1022 (internal quotation marks and citations

omitted); see In re Wells Fargo Home Mortg. Overtime Pay Litig., 571 F.3d 953, 959 (9th Cir. 2009) ("[T]he main concern in the predominance inquiry . . . [is] the balance between individual and common issues."). Additionally, the class damages must be sufficiently traceable to plaintiff's liability case. See Comcast Corp. v. Behrend, 569 U.S. 27, 35, 133 S.Ct. 1426, 1433 (2013).

Here, "[a] common nucleus of facts and potential legal remedies dominates this litigation." Hanlon, 150 F.3d at 1022. As discussed above, see supra at § I.A.2., there is a significant common question regarding defendant's failure to provide employees with proper wage statements. (See Dkt. 29, Motion at 8; see also Dkt. 29-1, Choi Decl. at ¶ 12 ("Based on discovery, Plaintiff believes and asserts that Defendant committed these violations as to Plaintiff in the same manner as to all Class Members."); Dkt. 35, Plaintiff's Supplemental Brief in Support of Motion for Preliminary Approval of Class Action Settlement at 2-3). The answer to this question would drive the resolution of the litigation, "despite the existence of minor factual differences between the potential class members, as the common issues predominate over varying factual predicates, such as number of hours worked under the allegedly unlawful workplace policies." Clesceri, 2011 WL 320998, at *5 (internal quotation marks omitted). Finally, the relief sought applies to all class members and is traceable to plaintiff's liability case. See Comcast, 133 S.Ct. at 1433. In short, common questions predominate over all others in this litigation.

2. Superiority.

"The superiority inquiry under Rule 23(b)(3) requires [a] determination of whether the objectives of the particular class action procedure will be achieved in the particular case" and "necessarily involves a comparative evaluation of alternative mechanisms of dispute resolution." Hanlon, 150 F.3d at 1023. Rule 23(b)(3) provides a list of four non-exhaustive factors relevant to superiority. See Fed. R. Civ. P. 23(b)(3)(A)-(D).

The first factor considers "the class members' interests in individually controlling the prosecution or defense of separate actions." Fed. R. Civ. P. 23(b)(3)(A). "This factor weighs against class certification where each class member has suffered sizeable damages or has an emotional stake in the litigation." Barbosa, 297 F.R.D. at 444. Here, plaintiff does not assert claims for emotional distress, nor is there any indication that the amount of damages any individual class member could recover is significant or substantially greater than the potential recovery of any other class member. (See, generally, Dkt. 20, SAC). The alternative method of resolution is individual claims for a relatively modest amount of damages, but such claims would likely never be brought, as "litigation costs would dwarf potential recovery." Hanlon, 150 F.3d at 1023; see Leyva v. Medline Indus., Inc., 716 F.3d 510, 515 (9th Cir. 2013) ("In light of the small size of the putative class members' potential individual monetary recovery, class certification may be the only feasible means for them to adjudicate their claims. Thus, class certification is also the superior method of adjudication."); Bruno v. Quten Research Inst., LLC, 280 F.R.D. 524, 537 (C.D. Cal. 2011) ("Given the small size of each class member's claim, class treatment is not merely the superior, but the only manner in which to ensure fair and efficient adjudication of the present action."). In short, "there is no evidence that Class members have any interest in controlling prosecution of their claims separately nor would they likely have the resources to do so." Munoz v. PHH Corp., 2013 WL 2146925, *26 (E.D. Cal. 2013).

The second factor to consider is "the extent and nature of any litigation concerning the controversy already begun by or against class members[.]" Fed. R. Civ. P. 23(b)(3)(B). While any class member who wishes to control his or her own litigation may opt out of the class, see Fed. R. Civ. P. 23(c)(2)(B)(v), "other pending litigation is evidence that individuals have an interest in controlling their own litigation." 2 Newberg on Class Actions, § 4:70 at p. 277 (5th ed. 2012) (emphasis omitted). Here, the parties have not directed the court to, and the court is not aware of, any related pending litigation. (See, generally, Dkt. 29, Motion).

The third factor is "the desirability or undesirability of concentrating the litigation of the claims in the particular forum," and the fourth factor is "the likely difficulties in managing a class action." Fed. R. Civ. P. 23(b)(3)(C)-(D). As noted above, "[i]n the context of settlement . . . the third and fourth factors are rendered moot and are irrelevant." Barbosa, 297 F.R.D. at 444; see Amchem, 521 U.S. at 620, 117 S.Ct. at 2248 ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, for the proposal is that there be no trial.") (citation omitted).

The only factors in play here weigh in favor of class treatment. Further, the filing of separate suits by hundreds of other class members "would create an unnecessary burden on judicial resources." Barbosa, 297 F.R.D. at 445. Under the circumstances, the court finds that the superiority requirement is satisfied.

II. FAIRNESS, REASONABLENESS, AND ADEQUACY OF THE PROPOSED SETTLEMENT.

A. The Settlement is the Product of Arm's-Length Negotiations.

"This circuit has long deferred to the private consensual decision of the parties." Rodriguez v. W. Publ'g Corp., 563 F.3d 948, 965 (9th Cir. 2009). The Ninth Circuit has "emphasized" that "the court's intrusion upon 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." Id. (internal quotation marks omitted). When the settlement is "the product of an arms-length, non-collusive, negotiated resolution[,]" id., courts afford the parties the presumption that the settlement is fair and reasonable. See Spann, 314 F.R.D. at 324; In re Netflix Privacy Litig., 2013 WL 1120801, *4 (N.D. Cal. 2013) ("Courts have afforded a presumption of fairness and reasonableness of a settlement agreement where that agreement was the product of non-collusive arms' length negotiations conducted

by capable and experienced counsel.").

Here, after the parties exchanged initial disclosures and utilized other discovery devices, (see Dkt. 29-1, Choi Decl. at ¶ 7), plaintiff analyzed the data to determine potential liability and damages. (See Dkt. 29, Motion at 11). The parties then engaged in arms-length negotiations before an experienced wage and hour mediator. (See Dkt. 29-1, Choi Decl. ¶ 8).

Based on the evidence and record before the court, the court is persuaded that the parties thoroughly investigated and considered their own and the opposing parties' positions. The parties had a sound basis for measuring the terms of the settlement against the risks of continued litigation, and there is no evidence that the settlement is "the product of fraud or overreaching by, or collusion between, the negotiating parties[.]" Rodriguez, 563 F.3d at 965 (quoting Officers for Justice, 688 F.2d at 625).

B. The Amount Offered in Settlement Falls Within a Range of Possible Judicial Approval and is a Fair and Reasonable Outcome for Class Members.

1. Recovery for Class Members.

As described above, the class members will share in a Gross Settlement Amount of $1,535,129. (See Dkt. 37, Exh. A, Amended Settlement Agreement at § 1.15). This amount represents approximately 20 percent of the maximum value of the total possible statutory penalties for such violations. (See id.; Dkt. 35-1, Supplemental Declaration of Edward W. Choi ("Choi Supp. Decl.") at ¶ 4). Additionally, the settlement promotes enforcement of wage and hour laws in that it provides for recovery for plaintiff's PAGA claim in the amount of $24,000 ("PAGA Allocation"). (See Dkt. 37, Exh. A, Amended Settlement Agreement at § 1.17).

Under the circumstances, the court finds the settlement is fair, reasonable, and adequate, particularly when viewed in light of the litigation risks in this case. For example, as plaintiff recognizes, there are "significant legal and factual battles that otherwise may have prevented the Class from obtaining any recovery at all." (See Dkt.

29, Motion at 11). Even assuming these challenges were overcome and class certification was granted and upheld on appeal, defeating summary judgment, winning the case at trial, and then sustaining the final judgment on appeal would have been very difficult. In short, the risks of continued litigation are significant in this case and when weighed against those risks, and the delays associated with continued litigation, the court is persuaded that the benefits to the class fall within the range of reasonableness. See, e.g., In re Mego Fin. Corp. Sec. Litig., 213 F.3d 454, 459 (9th Cir. 2000) (ruling that "the Settlement amount of almost $2 million was roughly one-sixth of the potential recovery, which, given the difficulties in proving the case, [was] fair and adequate"); In re Uber, 2017 WL 2806698, *7 (N.D. Cal. 2017) (granting preliminary approval of settlement that was worth 7.5% or less of the expected value); see also Linney v. Cellular Alaska P'ship, 151 F.3d 1234, 1242 (9th Cir. 1998) ("The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.") (internal quotation marks omitted).

2. Release of Claims.

Beyond the value of the settlement, potential recovery at trial, and the inherent risks in continued litigation, courts also consider whether a class action settlement contains an overly broad release of liability. See Newberg on Class Actions § 13:15, at p. 326 (5th ed. 2014); see, e.g., Fraser v. Asus Comput. Int'l, 2012 WL 6680142, *3 (N.D. Cal. 2012) (denying preliminary approval of proposed settlement that provided defendant a "nationwide blanket release" in exchange for payment "only on a claims-made basis," without the establishment of a settlement fund or any other benefit to the class).

Here, class members who do not exclude themselves from the settlement will release all claims "of every nature and description, whether known or unknown, that were or could have been brought based on the facts or claims alleged or litigated in the Second Amended Complaint filed in this Action. The claims released by the Settlement

Class Members include, but are not limited to, statutory, constitutional, contractual or common law claims for damages, penalties, punitive damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief, arising out of or based upon the following categories of allegations regardless of the forum in which they may be brought, to the fullest extent such claims are releasable by law: (a) any and all claims for failure to provide accurate wage statements pursuant to Labor Code § 226, and (b) all other civil and statutory penalties, including those recoverable under the Private Attorneys General Act, Labor Code Section 2698 et seq. based on the facts or claims alleged in the Second Amended Complaint ('Released Claims'). The Released Claims include without limitation claims meeting the above definition(s) under any and all applicable statutes, including without limitation any provision of the California Labor Code based on the facts or claims alleged in the Second Amended Complaint in the action; and any provision of the applicable California Industrial Welfare Commission Wage Orders based on the facts or claims alleged or litigated in the Second Amended Complaint in the Action." (Dkt. 37, Exh. A, Amended Settlement Agreement at § 13.3). The release signed by the class representative, as partial consideration for service payment, includes an additional general release of all claims, including a waiver of rights under Cal. Civ. Code § 1542. (See id. at § 13.1). With the understanding that class members are not giving up claims unrelated to those asserted in this lawsuit, and that the § 1542 waiver applies only to the class representative, the court finds that the release adequately balances fairness to absent class members and recovery for plaintiff with defendant's business interest in ending this litigation. See, e.g., Fraser, 2012 WL 6680142, at *4 (recognizing defendant's "legitimate business interest in 'buying peace' and moving on to its next challenge" as well as the need to prioritize "[f]airness to absent class member[s]").

C. The Settlement Agreement Does Not Improperly Grant Preferential Treatment to the Class Representatives.

"Incentive awards are payments to class representatives for their service to the

class in bringing the lawsuit." Radcliffe v. Experian Info. Sols. Inc., 715 F.3d 1157, 1163 (9th Cir. 2013). The Ninth Circuit has instructed "district courts to scrutinize carefully the awards so that they do not undermine the adequacy of the class representatives." Id. The court must examine whether there is a "significant disparity between the incentive awards and the payments to the rest of the class members" such that it creates a conflict of interest. See id. at 1165. "In deciding whether [an incentive] award is warranted, relevant factors include the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation." Cook v. Niedert, 142 F.3d 1004, 1016 (7th Cir. 1998).

The Amended Settlement Agreement provides that plaintiff may apply to the court for an award of not more than $7,500 as a class representative service payment and that Sheraton will not oppose a service payment of no more than $7,500. (See Dkt. 37, Exh. A, Amended Settlement Agreement at § 7). Here, the class representative took risks in agreeing to serve as named plaintiff and "made himself available throughout this litigation" including "providing substantive information regarding Defendant's practices." (See Dkt. 29-4, Castillo Decl. at ¶¶ 5 & 10). Additionally, the class representative was required to sign a broader release than the one to which the class members are subject. (See Dkt. 37, Exh. A, Amended Settlement Agreement at § 13.1). Finally, the class representative did not condition his approval of the settlement on the incentive payment. (See Dkt. 35-2, Castillo Supp. Decl. at ¶ 4). Nevertheless, although the class representative appears to have been diligent and taken on substantial responsibility in litigating the case, the court believes a $7,500 service payment is excessive, and tentatively finds that an incentive payment of no more than $5,000 is appropriate. See Dyer v. Wells Fargo Bank, N.A., 303 F.R.D. 326, 335 (N.D. Cal. 2014) (finding an incentive award of $5,000 presumptively reasonable).

D. Class Notice and Notification Procedures.

Upon settlement of a class action, "[t]he court must direct notice in a reasonable

manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1). Federal Rule of Civil Procedure 23(c)(2) requires the "best notice that is practicable under the circumstances, including individual notice" of particular information. See Fed. R. Civ. P. 23(c)(2)(B) (enumerating notice requirements for classes certified under Rule 23(b)(3)).

A class action settlement notice "is satisfactory if it generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard." Churchill Vill., LLC v. Gen. Elec., 361 F.3d 566, 575 (9th Cir.), cert. denied, 543 U.S. 818 (2004) (internal quotation marks omitted). "The standard for the adequacy of a settlement notice in a class action under either the Due Process Clause or the Federal Rules is measured by reasonableness." Wal-Mart Stores, Inc. v. Visa U.S.A., Inc., 396 F.3d 96, 113 (2d Cir.), cert. denied, 544 U.S. 1044 (2005). Settlement notices "are sufficient if they inform the class members of the nature of the pending action, the general terms of the settlement, that complete and detailed information is available from the court files, and that any class member may appear and be heard at the hearing." Gooch v. Life Inv'rs Ins. Co. of Am., 672 F.3d 402, 423 (6th Cir. 2012) (internal quotation marks omitted); see Wershba v. Apple Comput., Inc., 91 Cal.App.4th 224, 252 (2001) ("As a general rule, class notice must strike a balance between thoroughness and the need to avoid unduly complicating the content of the notice and confusing class members."). The notice should provide sufficient information to allow class members to decide whether they should accept the benefits of the settlement, opt out and pursue their own remedies, or object to its terms. See In re Integra Realty Resources, Inc., 262 F.3d 1089, 1111 (10th Cir. 2001) ("The standard for the settlement notice under Rule 23(e) is that it must 'fairly apprise' the class members of the terms of the proposed settlement and of their options.").

Here, the parties request that Phoenix Settlement Administrators be appointed as Settlement Administrator. (See Dkt. 37, Exh. A, Amended Settlement Agreement at §§ 1.31 & 14.1). Class members will receive notice by first class mail. (See id. at § 14.2.3;

Dkt. 35-1, Choi Supp. Decl. at Exh. A ("Notice")). The Notice describes the nature of the action, (see Dkt. 35-1, Notice at 1-2); Fed. R. Civ. P. 23(c)(2)(B)(i) & (iii), and the class definition is conspicuously included in the first page of the Notice, so that individuals can determine whether they are part of the class. (See Dkt. 35-1, Notice at 1). The Notice also explains the benefits of the settlement, including how each class member's Settlement Share will be calculated. (See id. at 1-3). The Notice explains that all class members who do not exclude themselves will release claims as set forth in the release provision. (See id. at 1 & 3-5). It also explains that if class members do nothing, they will automatically receive payment; if they exclude themselves, they will not receive any payment from the settlement; and if they would like to object, it explains the procedures for doing so. (See id.). Finally, if any class member wants to appear at the Final Approval Hearing, the Notice instructs them to make a written request and provides the court's information and the time and date of the hearing. (See id. at 5-6). If class members would like more detailed information regarding the settlement, the Notice indicates that they may call or write to the Settlement Administrator. (See id. at 6). Contact information for plaintiff's counsel is also provided. (See id. at 4).

Based on the foregoing, the court finds there is no alternative method of distribution that would be more practicable here, or any more reasonably likely to notify the class members. Under the circumstances, the court finds that the procedure for providing notice and the content of the class notice constitute the best practicable notice to class members and complies with the requirements of due process.

E. Summary.

In short, the court's preliminary evaluation of the Amended Settlement Agreement does not disclose grounds to doubt its fairness "such as unduly preferential treatment of class representatives or segments of the class, inadequate compensation or harms to the classes, . . . or excessive compensation for attorneys[.]" Manual for Complex Litigation § 21.632 (4th ed. 2004); see also Spann, 314 F.R.D. at 323.

CONCLUSION

Based on the foregoing, IT IS ORDERED THAT:

1. The Motion for Preliminary Approval of Class Action Settlement (Document No. 29) is granted upon the terms and conditions set forth in this Order.

2. The court preliminarily certifies the class, as defined in § 1.2 of the Amended Settlement Agreement, (Dkt. 37, Exh. A ("[A]ll persons who are employed or have been employed by Defendant as a non-exempt employee in California from September 26, 2016, to . . . July 16, 2018, who based on Defendant's available records received a paper pay summary that reflected either overtime or shift differential pay.")), for the purposes of settlement.

3. The court preliminarily appoints Miguel Angel Serrano Castillo as class representative for settlement purposes.

4. The court preliminarily appoints Larry Lee of Diversity Law Group, Edward W. Choi of the Law Offices of Choi & Associates, and David Lee of David Lee Law as Class Counsel for settlement purposes.

5. The court preliminarily finds that the terms of the Settlement are fair, reasonable, and adequate, and comply with Rule 23(e) of the Federal Rules of Civil Procedure.

6. The proposed manner of the notice of settlement set forth in the Amended Settlement Agreement constitutes the best notice practicable under the circumstances and complies with the requirements of due process.

7. The court approves the form, substance, and requirements of the Class Notice (Dkt. 37, Exhibit A to the Amended Settlement Agreement).

8. The parties shall carry out the settlement and claims process according to the terms of the Amended Settlement Agreement.

9. Phoenix Settlement Administrators shall complete dissemination of class notice, in accordance with the Amended Settlement Agreement, no later than April 19, 2019.

10. Any class member who wishes to: (a) object to the settlement, including the requested attorney's fees, costs and incentive award; or (b) exclude him or herself from the settlement must file his or her objection to the settlement or request for exclusion no later than June 18, 2019, in accordance with the Amended Settlement Agreement, and Notice.

11. Any class member who wishes to appear at the final approval (fairness) hearing, either on his or her own behalf or through an attorney, to object to the settlement, including the requested attorney's fees, costs and incentive awards, shall, no later than June 18, 2019, file with the court a Notice of Intent to Appear at Fairness Hearing.

12. A final approval (fairness) hearing is hereby set for August 22, 2019, at 10:00 a.m. in Courtroom 6D of the First Street Courthouse, to consider the fairness, reasonableness, and adequacy of the Settlement as well as the award of attorney's fees and costs to class counsel, and incentive awards to the class representatives.

13. Plaintiff shall file a motion for an award of class representative incentive payment and attorney's fees and costs no later than May 17, 2019, and notice it for hearing for the date set forth in paragraph 12 above. Any objection to the motion for an award of class representative incentive payment and attorney's fees and costs, by class members, shall be filed by the deadline set forth in paragraph 10 above. In the event any objections to the motion for an award of class representative incentive payment and attorney's fees and costs are filed, class counsel shall, no later than July 25, 2019, file a reply addressing the objections.

14. Plaintiff shall, no later than July 18, 2019, file and serve a motion for final approval of the settlement and a response to any objections to the settlement. The motion shall be noticed for hearing for the date set forth in paragraph 12 above. Defendant may file and serve a memorandum in support of final approval of the Amended Settlement Agreement or in response to objections no later than July 25, 2019.

15. All proceedings in the Action, other than proceedings necessary to carry out or enforce the Amended Settlement Agreement or this Order, are stayed pending the final fairness hearing and the court's decision whether to grant final approval of the settlement.

IT IS SO ORDERED.

Dated: April 9, 2019

/s/
Honorable Fernando M. Olguin
U.S. DISTRICT JUDGE