UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ELIJAY BEY, on behalf of himself and all others similarly situated, v. MOSAIC SALES SOLUTIONS US OPERATING CO., LLC, Defendant.	Case No. 16-6024 FMO (RAOx) **ORDER RE: MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

Having reviewed and considered all the briefing filed with respect to plaintiff's Renewed Motion for Preliminary Approval of Class Action Settlement, (Dkt. 68, "Motion") and the oral argument presented at the hearing on January 10, 2019, the court concludes as follows.

INTRODUCTION

On November 20, 2015, plaintiff Elijay Bey ("plaintiff" or "Bey"), filed a class action complaint in the Los Angeles County Superior Court against Mosaic Sales Solutions US Operating Co., LLC ("defendant" or "Mosaic"), asserting wage and hour claims. (See Dkt. 1-1, Complaint). On August 11, 2016, defendant removed the action to this court. (See Dkt. 1, Notice of Removal). On March 17, 2017, plaintiff filed a Third Amended Complaint ("TAC"), asserting claims for (1) failure to pay wages due and owing under California Labor Code ("Labor Code") §§ 201, 202, 203, 204, 210, 223, 226.7, 558, 1194, 1197, 1197.1, 1198 and California Industrial Welfare Commission ("IWC") Wage Order No. ("Wage Order No.") 4; (2) failure to pay overtime wages, pursuant to Labor Code §§ 223, 510, 558, 1194, 1198 & Wage Order No. 4; (3) failure to provide meal or rest

breaks pursuant to Labor Code §§ 226.7, 512 and Wage Order No. 4; (4) failure to provide accurate itemized statements pursuant to Labor Code § 226 and Wage Order No. 4; and (5) unfair competition, in violation of Cal. Bus. & Prof. Code §§ 17200 et seq. (Dkt. 28, TAC).

On February 27, 2018, after an all-day mediation before an experienced mediator of wage and hour class actions, Phillip Cha ("Cha"), the parties reached a settlement, which was conditioned upon post-mediation discovery. (See Dkt. 68, Motion at 8). Upon completion and review of the post-mediation discovery, the parties reached a settlement. (Id.). On November 15, 2018, the court denied plaintiff's initial motion for preliminary approval due to several deficiencies. (See Dkt. 62, Court's Order of November 15, 2018).

On December 7, 2018, plaintiff filed the instant Motion, seeking an order (1) preliminarily approving the Settlement Agreement; (2) conditionally certifying the a class for settlement purposes; (3) appointing Bey as the class representative; (4) appointing Bradley/Grombacher LLP and RGLawyers, LLP as class counsel; (5) appointing CPT Group, Inc. ("CPT") as settlement administrator; (6) approving the notice plan and authorizing notice of the settlement to the class; and (7) setting a schedule and procedures for final approval of the proposed settlement. (See Dkt. 68, Renewed Notice of Motion at 1-2).

Pursuant to the parties' stipulation, (see Dkt. 69, Court's Order of December 10, 2018), plaintiff filed the operative Fifth Amended Complaint ("5AC"), on December 10, 2018, which asserts claims for (1) failure to pay wages due and owing under California Labor Code ("Labor Code") §§ 201, 202, 203, 204, 210, 223, 226.7, 558, 1194, 1197, 1197.1, 1198 and Wage Order No. 4; (2) failure to pay overtime wages, pursuant to Labor Code §§ 223, 510, 558, 1194, 1198 & Wage Order No. 4; (3) failure to provide meal or rest breaks pursuant to Labor Code §§ 226.7, 512 and Wage Order No. 4 ; (4) failure to provide accurate itemized statements pursuant to Labor Code § 226 and Wage Order No. 4; (5) unfair competition in violation of Cal. Bus. & Prof. Code §§ 17200 et seq.; (6) failure to pay wages at time of termination pursuant to Labor Code §§ 201-203; (7) violations of the California Private Attorneys General Act ("PAGA"), pursuant to Labor Code §§ 2698, et seq.; and (8) failure to pay minimum wages pursuant to Labor Code § 1194. (Dkt. 71 5AC; Dkt. 68, Motion at 6).

BACKGROUND

This case arises from allegations that Mosaic, which operates "field marketing and merchandising, and sales campaigns throughout California," failed to comply with various provisions of the Labor Code. (See Dkt. 71, 5AC at ¶¶ 7-8, 10). Plaintiff alleges that he worked for defendant "in kiosks or other temporary structures in sales and/or marketing positions[,]" (id. at ¶ 7), and was, along with the proposed class of former and current non-exempt employees, "deprived of wages earned, minimum wages and overtime pay," and "uninterrupted meal and rest breaks, among other things." (Id. at ¶ 8). Specifically, plaintiff alleges that (1) defendant "failed to provide . . . Plaintiff and the members of the plaintiff class . . . [with] timely and uninterrupted meal and rest breaks;" (2) "Plaintiff and the Plaintiff Class worked off-the-clock setting up and dismantling kiosks for temporary promotions (e.g., college campus promotions, and other promotions outside of the semi-permanent mall installations), and were therefore denied regular and overtime wages;" (3) defendant "failed to pay Plaintiff and the members of the plaintiff class all final wages in a timely fashion[;]" (4) defendant "failed to pay minimum wages for all hours worked by Plaintiff and the members of the plaintiff class;" and (5) defendant "maintained a policy by which Plaintiff and the . . . plaintiff class could not earn overtime if the overtime hours worked were not all spent on the same client's promotion (e.g., if an employee spent 4 hours on working a promotion for one Mosaic client in a day, and 5 hours working on promotion for another of Mosaic's clients," he or she was not "entitled to overtime under Mosaic's policies, [and] not paid overtime)." (Id.).

On October 11, 2017, in response to an Order to Show Cause regarding the lapsed mediation deadline, plaintiff's counsel, Solomon Gresen ("Gresen"), explained that he "missed the cut off and did not conduct discovery in this case[.]" (See Dkt. 37, Court's Order of October 17, 2017, at 1). On its own motion, the court extended the case deadlines, including the mediation and discovery deadlines. (See id. at 1-2).

On February 1, 2018, the court issued a second Order to Show Cause regarding another lapsed mediation deadline. (See Dkt. 40, Court's Order of February 1, 2018). Given the parties' responses to the Order to Show Cause, particularly the indication that there had been no

meaningful discovery and the failure to schedule a mediation by the deadline set forth in the Court's Order of October 17, 2017, the court set a hearing regarding sanctions or dismissal. (See Dkt. 43, Court's Order of February 14, 2018). At the February 22, 2018, hearing, the court admonished plaintiff's counsel that given the lack of diligence on its part and the repeated missed deadlines, the court did not believe it could find counsel to be adequate when the court would be called upon to make such a determination. Accordingly, it directed counsel to find new counsel prior to filing a motion for class certification, and further sanctioned plaintiff's counsel. (See Dkt. 44, Court's Order of February 22, 2018). On March 1, 2018, Marcus J. Bradley and Kiley Lynn Grombacher of Bradley/Grombacher LLP associated in as counsel for plaintiff. (See Dkt. 46, Notice of Association of Counsel).

Pursuant to the settlement, the parties have defined the settlement class as "all non-exempt field employees working in the State of California from November 20, 2011 through the date of preliminary approval by the Court." (Dkt. 72, Exh. 1, Amended Joint Stipulation for Settlement and Release of Class and Representative Action Claims ("Settlement Agreement") at § 6). The relief available to the class, which includes 4,730 members, will come from a non-reversionary $3,000,000 settlement fund, (see id. at § 14; Dkt. 72, Revised Declaration of Marcus J. Bradley ("Bradley Decl.") at ¶ 15), after deductions for attorney's fees and costs, the costs of the claim administrator, the class representative award, and the PAGA payment to the California Labor & Workforce Development Agency ("LWDA"). (See Dkt. 72, Exh. 1, Settlement Agreement at §§ 15-16; Dkt. 68, Motion at 9). Subject to the court's approval, the settlement provides for up to $900,000 (or 30% of the gross settlement amount) in attorney's fees, (Dkt. 72, Exh. 1, Settlement Agreement at § 19; Dkt. 68, Motion at 9); up to $15,000 in litigation costs and expenses to class counsel, (id.); a service award to Bey of up to $10,000, (Dkt. 72, Exh. 1, Settlement Agreement at § 20; Dkt. 68, Motion at 9); up to $32,500.00 in settlement administration costs, (Dkt. 72, Exh. 1, Settlement Agreement at § 22; Dkt. 68, Motion at 9); and a $15,000 payment to the LWDA. (Dkt. 72, Exh. 1, Settlement Agreement at § 18; Dkt. 68, Motion at 9). The parties propose that the settlement be administered by CPT. (Dkt. 72, Exh. 1, Settlement Agreement at § 22). Amounts not approved by the court will revert to the settlement fund. (Id. at §§ 14, 21; Dkt. 68,

Motion at 9 n. 2). The resulting net settlement amount will be used to pay class members which, according to counsel, will result in an average class member payment of $428.64. (Dkt. 72, Bradley Decl. at ¶ 15).

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."[1] Smith v. Wm. Wrigley Jr. Co., 2010 WL 2401149, *3 (S.D. Fla. 2010) (internal citation and footnote 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

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

class." Fed. R. Civ. P. 23(a).

"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.") (emphasis original). However, courts need not consider the Rule 23(b)(3) issues regarding manageability of the class action, 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 Service Comm'n of the City & Cty. of San Francisco, 688 F.2d 615, 624 (9th Cir. 1982). 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. P. 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. 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); see 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 impracticable[.]" 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. Cty. of Los Angeles, 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 class is so numerous that joinder is impracticable. The settlement class includes 4,730 members, (see Dkt. 72, Bradley Decl. at ¶ 15), which easily exceeds the minimum threshold for numerosity.

2. **Commonality**.

The commonality requirement is satisfied if "there are questions of law or fact common to the class[.]" Fed. R. Civ. P. 23(a)(2). Commonality requires plaintiff to demonstrate that their 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) (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 Hanlon, 150 F.3d at 1019; 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. The common questions include, among others, whether defendant's rest break and meal period, timekeeping, and compensation policies are compliant with California law, and whether defendant's wage statements are compliant with California law. (See Dkt. 68, Motion at 14-15); see, e.g., Clesceri v. Beach City Investigations & Protective Services, 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 the Labor Code).

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, plaintiff's 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 plaintiffs, 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. Plaintiff, like the class members, was employed in an hourly, non-exempt position by defendant during the relevant time period. The claims of plaintiff and the class members arise from the same factual basis and are based on the same legal theories, i.e., defendant violated their rights under California law by failing to: (1) pay them appropriately for off-the-clock work; (2) provide legally required meal and rest breaks; and (3) provide compliant wage statements. (See Dkt. 68, Motion at 16-17). 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 Plaintiffs 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 plaintiffs will adequately represent a class, courts must resolve two questions: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their 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.

Here, the proposed class representative, who does not have any individual claims separate from the class claims, (see, generally, Dkt. 71, 5AC), does not appear to have any conflicts of interest with the absent class members. (See Dkt. 68-4, Declaration of Elijah Bey ("Bey Decl.") at ¶¶ 3, 16) (Bey stating that he is "not aware of any conflicts that would prevent [him] from serving as a class representative in this matter."). Bey represents that he "decided to vindicate not only [his] own rights but also those of [his] former co-workers by filing [this] class-action lawsuit[,]" (id. at ¶ 12), and that "[t]hroughout this case, [he] has always kept the best interests of the Class in mind over [his] own." (Id. at ¶ 19). Thus, "[t]he adequacy-of-representation requirement is met

here because Plaintiff[] ha[s] the same interests as the absent Class Members[.] Further, there is no apparent conflict of interest between the named Plaintiff['s] claims and those of the other Class Members' – particularly because the named Plaintiff[] ha[s] no separate and individual claims apart from the Class." Barbosa v. Cargill Meat Solutions Corp, 297 F.R.D. 431, 442 (E.D. Cal. 2013).

With respect to plaintiff's counsel, while the court has serious concerns regarding counsel from the law firm of RGLawyers, LLP, the court is satisfied that additional counsel, Marcus Bradley is experienced in class action litigation, and has adequately prosecuted this action since their appearance in this action.[2] See 1 Newberg on Class Actions § 3:87, at p. 438 (5th ed. 2014) (explaining that courts have "added additional counsel in order to remedy some defect" in counsel's qualifications). Bradley represents that he and his firm, Bradley/Grombacher have "extensive experience litigating wage and hour class and representative actions as well as complex consumer class actions." (Dkt. 72, Bradley Decl. at ¶ 21). He provides a listing of several class actions in which he and other members of his firm have acted as lead or co-counsel. (See id. at ¶ 23) (listing cases). According to Bradley, since approximately 2000, he has "spent most of [his] time representing workers in wage and hour matters." (Id.). Based on Bradley's representations, the court finds that counsel from Bradley/Grombacher 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.").

In short, the court sees no signs of an "improper conflict of interest . . . which would deny absent class members adequate representation." Hanlon, 150 F.3d at 1021.

B. Rule 23(b) Requirements.

Certification under Rule 23(b)(3) is proper "whenever the actual interests of the parties can

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[2] Since the court will not be appointing RGLawyers LLP as class counsel, any motion for attorney's fees filed by plaintiff's counsel must break out the rates and hours by each law firm. The motion should include a separate request for fees and costs for each law firm.

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, the court is persuaded that "[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 are common questions regarding defendant's employment practices. Common questions include, among others, whether defendant's rest break and meal period, timekeeping, and compensation policies are compliant with California law, and whether defendant's wage statements were compliant with California law. See supra at § I.A.2.; (see also 68, Motion at 18). According to plaintiff, these inquiries turn upon policies that apply across the board to plaintiff and members of the class. (See Dkt. 68, Motion at 18). The answer to these questions 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 *7 (internal quotation marks omitted); see, e.g. In re Walgreen Co. Wage & Hour Litig., 2014 WL 12853545, *5 (C.D. Cal. 2014) ("Defendant's liability in this case stems from a number of claims, all of which arise out of its alleged uniform policies and practices: (1) off-the-clock claims; (2) meal and rest break claims; (3) overtime claims; and (4) reimbursement claims. . . . Issues like these are suitable for common adjudication because Plaintiffs and the putative class members all worked in nonexempt employment positions and were subject to the same alleged class-wide policies, enabling liability to be determined on a class-wide basis. As a result, a single adjudication would decide whether the conditions of employment for all class members violated state and federal law, and, ultimately, whether all or none of the members were harmed."). In short, there are several common questions that predominate over all others in this litigation.

2. **Superiority**.

"The superiority inquiry under Rule 23(b)(3) requires 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 any 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. 71, 5AC). The alternative method of resolution – pursuing individual claims for a relatively modest amount of damages – 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 case 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 (emphasis omitted). Here, defendant's counsel advised the court during the November 15, 2018, hearing that there was another case with potentially overlapping PAGA claims, (see Dkt. 83, Reporter's Transcript ("RT") at 10, 17), and subsequently the plaintiff in the other action sought to intervene in this case, (see Dkt. 74), which the court denied in a separate order. (See Dkt.87, Court's Order of June 19, 2019). As the court stated during the November 15 hearing, since the aggrieved employees in the other PAGA case will receive notice of this settlement, they will be permitted to "weigh in" on the settlement in connection with the final approval process. (See Dkt. 83, RT at 17-18; see also Dkt.87, Court's Order of June 19, 2019).

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 ("A presumption of correctness is said to attach to a class settlement reached in arm's-length negotiations between experienced capable counsel after meaningful discovery.") (internal citation omitted); 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, the parties engaged in formal and informal discovery, including the depositions of plaintiff and defendant's Rule 30(b)(6) witnesses. (See Dkt. 72, Bradley Decl. at ¶¶ 7-8). Defendant produced a sampling of class member payroll and timekeeping data, as well as relevant policies. (See id. at ¶ 7). The parties also participated in an all-day mediation presided over by an experienced mediator of wage and hour class actions, (see Dkt. 68, Motion at 21; Dkt. 72, Bradley Decl. at ¶ 10), and engaged in "diligent, and arms-length negotiations[.]" (Dkt. 72, Bradley Decl. at ¶ 10). Following the mediation, plaintiff's counsel conducted discovery to confirm various data points produced by defendant, (see id. at ¶¶ 10-11; Dkt. 68, Motion at 4), and the parties

formalized the settlement upon such verification. (Dkt. 72, Bradley Decl. at ¶ 11). Finally, plaintiff's counsel has concluded that the settlement "is reasonable, fair and equitable to both side." (Id.).

Based on the evidence and record before the court, the court is persuaded that the parties adequately investigated and considered their own and the opposing party's 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 non-reversionary gross settlement amount of $3,000,000. (See Dkt. 72, Exh. 1, Settlement Agreement at § 14). If the requested attorney's fees and costs, the LWDA payment, settlement administration costs, and the service award are approved, the average net recovery for each class member will be $428.64. (See Dkt. 72, Bradley Decl. at ¶ 15).

Based on interviews with class members and an analysis of a sampling of defendant's business records, plaintiff's counsel, in conjunction with its retained expert, Bennett Berger, estimated that the total damages, monetary penalties, and other relief the class if successful at trial would be $8.7 million. (See Dkt. 72, Bradley Decl. at ¶ 12; Dkt. 68-3, Declaration of Bennett Berger ("Berger Decl.") at ¶ 22; Dkt. 68, Motion at 7, 26–31). "[T]he amount of penalties, interest and PAGA damages would add an additional $21.8 million." (Dkt. 68, Motion at 26; Dkt 72, Bradley Decl. at ¶ 12; Dkt. 68-3, Berger Decl. at ¶¶ 15-22). However, counsel believe the amount the class could reasonably be expected to be awarded would actually be somewhere between $2.5 million and $5 million given that the bulk of the monetary relief was attributed to penalties and interest, and the fact that a large number of the class members executed arbitration agreements. (See Dkt. 72, Bradley Decl. at ¶ 13; see also Dkt. 68, Motion at 26-30). Thus, the settlement

amount falls within the range the class could reasonably be expected to be awarded. 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 $20,000.[3] (See Dkt. 72, Settlement Agreement at § 18).

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. (See Dkt. 68, Motion at 24-26). For instance, in 2016 defendant instituted an arbitration procedure with a class action waiver. (See id. at 26; Dkt. 72, Bradley Decl. at ¶ 34). While employees could opt out of the class action waiver, the vast majority did not, and as a result, defendant could have asserted the waiver as a defense. (See Dkt. 68, Motion at 26); see also Epic Systems Corp. v. Lewis, 138 S.Ct. 1612, 1622-23 (2018) (acknowledging that class action waivers are proper in arbitration procedures where the "principal advantage of arbitration" is not sacrificed). Plaintiff also recognized that given the uncertainty surrounding both certification and liability as to the claims alleged in the action, it was a virtual certainty that the litigation would proceed through the appellate process. (See Dkt. 68, Motion at 33).

In short, the risks of continued litigation are significant, and the court takes these real risks into account. Weighed against those risks, and coupled with 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 Partnership, 151 F.3d 1234, 1242 (9th Cir. 1998) ("The fact that a proposed settlement may only amount to a fraction

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[3] Although the LWDA received notice of the settlement, (See Dkt. 83, RT at 5-6; Dkt. 68, Motion at 35), it did not object or respond, which the court construes as consent to proposed settlement terms. See Echavez v. Abercrombie & Fitch Co., Inc., 2017 WL 3669607, *3 (C.D. Cal. 2017) ("[T]he Court finds persuasive that LWDA was invited to file a response to the proposed settlement agreement in this case and elected not to file any objections or opposition thereto. The Court infers LWDA's non-response is tantamount to its consent to the proposed settlement terms, namely the proposed PAGA penalty amount.").

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**.

The court also considers whether a class action settlement contains an overly broad release of liability. See Newberg on Class Actions § 13:15 (5th ed. 2014) ("Beyond the value of the settlement, courts have rejected preliminary approval when the proposed settlement contains obvious substantive defects such as . . . overly broad releases of liability."); see, e.g., Fraser v. Asus Computer 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 defendant "from all claims, demands, rights, liabilities, and causes of action that were asserted in the 5AC, and all violations asserted in any notice sent to the LWDA referenced in any such pleadings on behalf of Plaintiff and the Settlement Class members, and any additional claims that could have been brought based on the facts alleged in the 5AC, and notice sent to the LWDA referenced in any such pleadings through the date of the Final Approval of this Settlement Agreement." (Dkt. 72, Exh. 1, Settlement Agreement at § 34). The Settlement Agreement further provides that "the LWDA and all Settlement Class members, regardless of whether they opted out of the Settlement as it pertains to the putative class claims, shall be deemed to have released all claims for civil penalties under PAGA." (Id.). The release signed by the class representative includes an additional general release of all claims, including a waiver of rights under Cal. Civ. Code § 1542. (See id. at § 35). 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 plaintiff and the absent class members 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 Representative.

"Incentive awards are payments to class representatives for their service to the class in bringing the lawsuit." Radcliffe v. Experian Info. Solutions 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 Settlement Agreement provides that plaintiff's counsel may apply for an "enhancement award" for plaintiff in an amount "not to exceed $10,000.00 in consideration for serving as Class Representative." (Dkt. 72, Exh. 1, Settlement Agreement at § 20). The court's approval, denial, or reduction of any requested enhancement is "not a material condition to the Settlement Agreement" and any order or proceeding relating to such an award "shall not operate to terminate or cancel" the agreement. (Id.). If the court approves an enhancement award of less than $10,000, and if plaintiff or class counsel does not appeal such a reduction, any amount not awarded will be added to the net settlement fund and distributed to the settlement class. (See id. at § 21). Although plaintiff appears to have been diligent and taken on substantial responsibility in litigating this case, including sitting for his deposition, (see Dkt. 68-4, Bey Decl. at ¶¶ 11-15; Dkt. 72, Bradley Decl. at ¶¶ 7, 20; Dkt. 68-5, Declaration of Solomon E. Gresen at ¶ 5, 12-13), the court believes that a $10,000 service award is excessive. Under the circumstances here, the court 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 certified class, "[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)(B). 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. 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. 2005); Low v. Trump University, LLC, 881 F.3d 1111, 1117 (9th Cir. 2018) ("The yardstick against which we measure the sufficiency of notices in class action proceedings is one of reasonableness.") (internal quotation marks omitted). 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), disapproved of on other grounds by Hernandez v. Restoration Hardware, Inc., 4 Cal.5th 260, 269 (2018) ("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 CPT be appointed as Settlement Administrator. (See Dkt.

72, Exh. 1, Settlement Agreement at § 22). CPT will mail the notice packet, which consists of the notice and an exclusion form, to class members. (See id. at § 33; Exh. A ("Notice"); & Exh. B (Exclusion Form) (collectively "Notice Packet")). The Notice describes the nature of the action, including the class claims. (See Dkt. 72, Notice at 1-2); Fed. R. Civ. P. 23(c)(2)(B)(i) & (iii). The class definition is clearly set forth on the first page of the Notice, so that individuals can determine whether they are part of the class. (See Dkt. 72, 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 3-4). The Notice explains that all class members who do not exclude themselves will release claims as set forth in the Notice. (See id. at 5, 7-8) (setting forth release). The Notice also explains that if class members do nothing, they will automatically receive payment; if they exclude themselves, they will not receive a payment from the class claims (but will nonetheless receive a portion of the PAGA penalty amount); and if they would like to object, it explains the procedures for doing so. (See id. at 5-7). Additionally, if any class members want to appear at the Final Approval Hearing, the Notice instructs them to make a written request and provides the time and date of the hearing.[4] (See id. at 6-8). Finally, if class members would like more detailed information regarding the settlement, the Notice indicates that they may call or write the Settlement Administrator. (See id. at 8).

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.

The court's preliminary evaluation of the Settlement Agreement does not disclose grounds to doubt its fairness "such as unduly preferential treatment of class representatives or segments

[4] The Notice instructs that "[o]bjections not previously sent in writing in a timely manner . . . will not be considered by the Court." (Dkt. 72, Notice at 6).

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. Plaintiff's Amended Motion for (1) Preliminary Approval of Class and Representative Action Settlement and (2) Certification of the Class; and (3) Approval of Notice to the Class **(Document No. 68)** is **granted** upon the terms and conditions set forth in this Order.

2. The court preliminarily certifies the class, as defined in § 6 of the Amended Joint Stipulation for Settlement and Release of Class and Representative Action Claims ("Settlement Agreement") (Dkt. 72, Exh. 1) for the purposes of settlement.

3. The court preliminarily appoints plaintiff Elijah Bey as class representative for settlement purposes.

4. The court preliminarily appoints the Marcus J. Bradley and Kiley Lynn Grombacher of Bradley/Grombacher LLP 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 court approves the form, substance, and requirements of the Notice Packet. (See Dkt. 72, Exh. A). The proposed manner of notice of the settlement set forth in the Settlement Agreement constitutes the best notice practicable under the circumstances and complies with the requirements of due process.

7. CPT shall complete dissemination of class notice, in accordance with the Settlement Agreement, no later than **July 17, 2019**.

8. Plaintiff shall file a motion for an award of class representative incentive payment and attorney's fees and costs no later than **August 16, 2019,** and notice it for hearing for the date of the final approval hearing set forth below.

9. 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 **September 17, 2019**, in accordance with the Notice.

10. Plaintiff shall, no later than **October 3, 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 of the final approval hearing set forth below.

11. Defendants may file a memorandum in support of final approval of the Settlement Agreement and/or in response to objections no later than **October 19, 2019**.

12. 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 or incentive award, shall, no later than **October 10, 2019**, file with the court a Notice of Intent to Appear at Fairness Hearing.

13. A final approval (fairness) hearing is hereby set for **October 24, 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 service award to the class representative.

14. All proceedings in the Action, other than proceedings necessary to carry out or enforce the 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.

Dated this 20th day of June, 2019.

/s/
Fernando M. Olguin
United States District Judge