UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 21-00086 PSG (JEMx)	Date	January 24, 2024
Title	Marjorie Saint Hubert et al. v. Equinox Holdings, Inc. et al.		

Present: The Honorable	Philip S. Gutierrez, United States District Judge

Kelly Davis	Not Reported
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiff(s):	Attorneys Present for Defendant(s):
Not Present	Not Present

Proceedings (In Chambers): **Order GRANTING Plaintiff's motion for preliminary approval of class action settlement [Dkt. # 66].**

Before the Court is the second renewed motion for preliminary approval of class action settlement filed by Plaintiff Marjorie Saint Hubert ("Plaintiff"). *See generally* Dkt. # 66-1 ("*Mot.*"). Defendant Equinox Holdings Inc. ("Defendant") has not opposed. The Court finds this matter appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78; L.R. 7-15. Having considered the moving papers, the Court **GRANTS** Plaintiff's motion for preliminary approval of class action settlement.

I. Background

A. Factual and Procedural History

In December 2020, Plaintiffs Hubert, Valerie Martinez ("Plaintiff Martinez"), and Therese Svengert ("Plaintiff Svengert") (collectively "Plaintiffs") filed this putative class action in California state court, asserting numerous wage and hour claims in violation of the California Labor Code and Business & Professions Code. *See generally* Dkt. # 1-1. Defendant then removed the case to this Court. *See generally* Dkt. # 1. The operative first amended complaint, filed in July 2021, asserts eight causes of action:

> First Cause of Action: Failure to provide reimbursement of business expenses, Cal. Lab. Code § 2802. *First Amended Complaint*, Dkt. # 16 ("*FAC*"), ¶¶ 40–43.
>
> Second Cause of Action: Failure to provide meal periods. *Id.* ¶¶ 44–52.

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Third Cause of Action: Failure to provide rest periods. *Id.* ¶¶ 53–61.

Fourth Cause of Action: Failure to pay all earned wages, Cal. Lab. Code § 226. *Id.* ¶¶ 62–72.

Fifth Cause of Action: Failure to provide accurate itemized statements, Cal. Lab. Code § 226. *Id.* ¶¶ 73–75.

Sixth Cause of Action: Waiting Time Penalties, Cal. Lab. Code § 203. *Id.* ¶¶ 76–78.

Seventh Cause of Action: Unfair Business Practices, Cal. Bus. & Prof. Code §§17200, *et. seq.* *Id.* ¶¶ 79–85.

Eighth Cause of Action: Violation of the Private Attorneys General Act, Cal. Lab. Code §§ 2698, *et. seq.* ("PAGA"). *Id.* ¶¶ 86–95.

In January 2022, Defendant moved for summary judgment as to Plaintiffs' first cause of action—alleging a failure to reimburse parking expenses—arguing that Defendant's parking program is optional and that Plaintiffs' parking expenses were not incurred in direct consequence of Plaintiffs' job duties. *See generally Notice of Motion and Motion for Partial Summary Judgment*, Dkt. # 22. This Court granted Defendant's motion for partial summary judgment in March 2022, finding that Plaintiffs did not show a genuine issue of material fact as to whether the parking expenses were incurred in direct consequence of Plaintiffs' job duties. Dkt. # 38 ("*Summ. J. Order*"), 7–10. The Court noted that Plaintiffs' second through eighth causes of action remain. *Id.* 10.

In September 2022, Plaintiff and Defendant[1] attended a mediation before mediator Stephen Benardo. *Declaration of Omid Nosrati*, Dkt. # 64-2 ("*Nosrati Decl.*"), ¶ 6. And by the end of September 2022, the parties accepted Mr. Benardo's proposal and settled the matter in principle. *Id.*; Dkts. # 46, 47.

After months of finalizing the terms of the settlement, the parties executed a Joint Stipulation of Class Settlement and Release ("Settlement Agreement"). *Nosrati Decl.* ¶¶ 10–12. Plaintiff initially filed an unopposed motion for preliminary approval of class action settlement on July 27, 2023. *See generally* Dkt. # 62. By order entered August 23, 2023, the Court denied

[1] Plaintiffs Martinez and Svengert are not part of the settlement, leaving Plaintiff as the sole plaintiff and class representative. *See Proposed Notice,* Dkt. # 64-4 ("*Proposed Notice*"), § 3.

the unopposed motion for preliminary approval without prejudice because the Court lacked sufficient information to assess the fairness and reasonableness of the gross settlement and had concerns regarding the scope of the settlement's release and the class notice. *See generally Order Denying Motion for Preliminary Approval*, Dkt. # 63 ("*Order Denying Mot. for Prelim. Approval*").

Plaintiff then renewed her motion for preliminary approval of class action on October 6, 2023. *See generally* Dkt. # 64. While Plaintiff addressed the majority of the issues raised by the Court, the Court denied the renewed motion for preliminary approval without prejudice because it remained concerned that the Settlement Agreement's release of the class claims via the opt-out mechanism was improper under FLSA. *See generally Order Denying Renewed Motion for Preliminary Approval*, Dkt. # 65 ("*Order Denying Renewed Mot. for Prelim. Approval*").

Plaintiff now renews her motion for preliminary approval of class action settlement. *See generally Mot.*

B. Settlement Terms

The proposed Settlement Agreement resolves claims between Defendant and the settlement class ("Class" or "Class Member(s)"), defined as: "all persons employed by Defendant as a Membership Advisor or Senior Membership Advisor in California at any time from December 1, 2016, to date of preliminary approval." *Mot.* 4:2–5; *Nosrati Decl.* ¶ 33, Ex. 1, Dkt. # 66-3 ("*Settlement*"), ¶ 6.

Under the Settlement Agreement, Defendant agrees to pay a gross settlement fund of $225,000 ("Gross Settlement"). *Mot.* 4:6–13; *Settlement* ¶ 10. The Gross Settlement includes attorneys' fees and costs, enhancement awards, and claims administration. *Id.* Defendant's settlement payment will not exceed the Gross Settlement except for Defendant's share of the payroll taxes. *Id.* The Gross Settlement is an all-in common fund settlement, and there will be no reversion of any portion of the fund to Defendant. *Id.*

The Settlement Agreement permits Plaintiff's counsel to seek one-third of the Gross Settlement in attorneys' fees. *Mot.* 5:18–25; *Settlement* ¶ 32. Plaintiff's counsel, however, intends to seek a lesser amount, twenty-five percent—$56,250. *Mot.* 5:20–21. Further, the Settlement Agreement limits actual litigation costs and expenses to $25,000, the enhancement award to $5,000, and settlement administration costs to $20,000. *Settlement* ¶¶ 32–34. After these deductions, the net settlement amount to be distributed to the Class Members is $118,750 ("Net Settlement"). *See Mot.* 21:17–21.

The Net Settlement will be allocated to each Class Member according to the number of weeks he or she worked during the class period based on Defendant's records. *Id.* 5:4–17; *Settlement* ¶ 35. If all the approximately 419 Class Members participate in the Settlement Agreement and each member worked the same number of shifts, each class member will receive roughly $283. *Mot.* 21:17–27.

> In exchange, the Class Members will release Defendant from:
> [A]ll claims under state, federal or local law, whether statutory, common law or administrative law, alleged in the operative complaint in the Action, or that could have been alleged based on the factual allegations in the operative complaint in the Action, including but not limited to: (1) Failure to Pay Wages, including minimum wages; (2) Failure to Pay Overtime Wages; (3) Failure To Provide Meal Periods; and (4) Failure To Provide Rest Periods, including but not limited to failing to pay rest period premiums at the regular rate of pay, including, but not limited to, claims for injunctive relief; punitive damages; liquidated damages, penalties of any nature; interest; fees; costs; and, all other claims and allegations made or which could have been made based on the allegations in the operative complaint in the Action, from December 1, 2016, to through preliminary approval ("Released Class Claims").

Settlement ¶ 22.

Any Class Member, who does not affirmatively opt-out of the Settlement Agreement, "will be bound by all of [its] terms, including those pertaining to the Released Class Claims." *Id.* ¶ 48. The Settlement Agreement specifies, however, that "[b]y operation of cashing, depositing or otherwise negotiating their Individual Settlement Payment checks, Class Members will be deemed to have opted-in to the settlement for purposes of the Fair Labor Standards Act. ('FLSA')." *Id.* ¶ 48a.

To inform Class Members of the Settlement Agreement, Plaintiff proposes the following notice plan. Within 30 days of preliminary approval, Defendant will provide the settlement administrator with a Class list. *Id.* ¶ 39. If Defendant does not provide a complete Class list within 30 days, it will have 15 additional days to provide the remainder of the Class list to the settlement administrator. *Id.* The settlement administrator will mail a Class notice of the Settlement Agreement ("Proposed Notice"), *see generally Nosrati Decl.* ¶ 34, Ex. 2, Dkt. # 66-4 ("*Proposed Notice*"), within 30 days of receiving the Class list detailing the settlement's terms along with the total workweeks for each Class Member and an estimate of each Class Member's individual settlement payment. *Settlement* ¶¶ 40, 42. The settlement administrator will also

perform address verification and skip-tracing in a further attempt to locate other Class Members. *Id.* ¶ 41. Class Members will then have 60 days from the initial mailing of the Proposed Notice to opt out of the Settlement Agreement or object to its terms. *Id.* ¶ 25.

II. Legal Standard

When parties settle an action before class certification, the court is obligated to "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). Preliminary approval of a class settlement is generally a two-step process. First, the court must assess whether a class exists. *Id.* (citing *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997)). Second, the court must determine "whether [the] proposed settlement is fundamentally fair, adequate, and reasonable." *Id.* (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)) (internal quotation marks omitted). The decision to approve or reject a settlement is within the Court's discretion. *Hanlon*, 150 F.3d at 1026.

III. Class Certification for Settlement Purposes

A. Class Certification Legal Standard

Parties seeking certification of a settlement-only class must still satisfy the Federal Rule of Civil Procedure 23 standards. *See id.* 1019–24. Under Rule 23, a plaintiff must satisfy the four prerequisites of Rule 23(a) and demonstrate that the action is maintainable under Rule 23(b). *See Amchem*, 521 U.S. at 613–14. The four prerequisites of Rule 23(a) are: (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation. *See* Fed. R. Civ. P. 23(a). Plaintiff seeks certification under Rule 23(b)(3), *see Mot.* 7:21–23, 12:10–13:12, which requires that "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," Fed R. Civ. P. 23(b)(3).

B. Discussion

i. Numerosity

The first requirement for maintaining a class action under Rule 23(a) is that the class is "so numerous that joinder of all members would be impracticable." Fed. R. Civ. P. 23(a)(1). Courts generally presume numerosity when there are at least forty members in the proposed

class. *See Charlebois v. Angels Baseball, LP*, No. SACV 10-0853 DOC (ANx), 2011 WL 2610122, at *4 (C.D. Cal. June 30, 2011).

Here, the Class is composed of approximately 419 individuals, which is sufficiently numerous for settlement purposes. *See Mot.* 8:4–8. Therefore, numerosity is satisfied.

ii. Commonality

To fulfill the commonality requirement, Plaintiff must establish questions of law or fact common to the class as a whole. *See* Fed. R. Civ. P. 23(a)(2). The class claims must depend on a common contention that "is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). "What matters to class certification . . . is not the raising of common 'questions'—even in droves—but rather the capacity of a classwide proceeding to generate common answers apt to drive the resolution of the litigation." *Id.* (internal quotation marks omitted) (emphasis removed). For the purposes of Rule 23(a)(2), even a single common question satisfies the requirement. *See id.* at 359; *Abdullah v. U.S. Sec. Assocs.*, 731 F.3d 952, 957 (9th Cir. 2013) (citing *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 589 (9th Cir. 2012)).

Here, Plaintiff alleges that Defendant had practices that required Class Members to work through their meal and rest periods, particularly during the "Close Out" period—the last three days of the month. *Mot.* 9:12–17, 10:7–9. Plaintiff identifies several questions of fact and law common to the class: (1) whether Defendant engaged in a common course of failing to provide duty-free meal periods; (2) whether Defendant engaged in a common course of failing to provide meal periods by the end of the fifth hour of work; (3) whether Defendant engaged in a common course of failing to provide second meal periods when working in excess of 10 hours in a shift; (4) whether Defendant failed to pay one additional hour of pay at the employee's regular rate for each day that an alleged meal period violation occurred; (5) whether Defendant engaged in a common course of failing to provide duty-free rest periods; and (6) whether Defendant failed to pay one additional hour of pay at the employee's regular rate for each day that a rest period was not provided. *Id.* 9:17–24, 10:9–13. And as such, Plaintiff contends that common legal and factual issues would arise in determining the legality of Defendant's practices or policies. *See id.* 8:17–26.

The Court agrees with Plaintiff. *See Dukes*, 564 U.S. at 350; *see also Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001) ("Commonality is satisfied where the lawsuit challenges a system-wide practice or policy that affects all of the putative class members."); *Brinker Rest.*

Corp. v. Superior Ct., 53 Cal. 4th 1004, 1033 (2012) ("Claims alleging that a uniform policy consistently applied to a group of employees is in violation of the wage and hour laws are of the sort routinely, and properly, found suitable for class treatment."). Accordingly, the commonality requirement is satisfied.

iii. Typicality

Typicality requires a showing that the named plaintiffs are members of the class they represent and that their claims are "reasonably co-extensive with those of absent class members," but not necessarily "substantially identical." *Hanlon*, 150 F.3d at 1020; *see* Fed. R. Civ. P. 23(a)(3). 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 v. Costco Wholesale Corp*., 657 F.3d 970, 984 (9th Cir. 2011) (quoting *Hanon v. Dataproducts Corp*., 976 F.2d 497, 508 (9th Cir. 1992)) (internal quotation marks omitted). The typicality and commonality requirements somewhat overlap. *See Gen. Tel. Co. Sw. v. Falcon*, 457 U.S. 147, 157 n.13 (1982).

Plaintiff alleges that she and the Class Members worked for Defendant as a Membership Advisor or Senior Membership Advisor in California, were subjected to Defendant's common policies and procedures, and suffered the same violations as a result of these policies and procedures. *Mot*. 11:11–20; *id.* 4:2–5. Thus, the claims of Plaintiff and the members of the Class arise from the same course of conduct by Defendant, involve the same issues, and are based on the same legal theories. *See id.* 11:11–20. Accordingly, the typicality requirement is satisfied.

iv. Adequacy

The final requirement of Rule 23(a) is that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). The Ninth Circuit has indicated that "[t]he proper resolution of this issue requires that two questions be addressed: (a) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (b) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *In re Mego Fin. Corp. Sec. Litig*., 213 F.3d 454, 462 (9th Cir. 2000).

Here, Plaintiff has no apparent conflicts of interest between herself and Class Members. *Mot.* 12:3–6; *Nosrati Decl*. ¶ 19. Plaintiff shares the same interests as the putative class members as they were all employed by Defendant, subject to the same injuries, and her claims

are the same as the claims of the putative class members. *Id.* 12:1–3; *see also id.* 4:2–5; *Declaration of Marjorie Saint Hubert*, Dkt. # 66-6 ("*Hubert Decl.*"), ¶ 6.

Additionally, Plaintiff's counsel appears qualified and committed to representing the Class. Plaintiff's counsel has expended considerable time and effort on this case as he has investigated the factual and legal issues of the case, engaged in discovery, drafted motions, analyzed damages, and mediated with Defendant. *Nosrati Decl.* ¶ 19–22. Plaintiff's counsel also has extensive experience handling wage and hour class actions and has previously been appointed as class counsel in other cases. *Id.* ¶¶ 14–18. Accordingly, the Court concludes that adequacy is satisfied.

v. Predominance and Superiority

Having concluded that the Class satisfies the Rule 23(a) factors, the Court now turns to Rule 23(b)(3)'s requirements.

The predominance component of Rule 23(b)(3) requires a district court to find that "the questions of law or fact common to class members predominate over any questions affecting only individual members." Fed. R. Civ. P. 23(b)(3). "The requirements of Rule 23(b)(3) overlap with the requirements of Rule 23(a): the plaintiffs must prove that there are 'questions of law or fact common to class members' that can be determined in one stroke . . . in order to prove that such common questions predominate over individual ones[.]" *Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651, 664 (9th Cir. 2022); *Hanlon*, 150 F.3d at 1022 ("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.").

Plaintiff alleges that her theories of liability arose from Defendant's system-wide practice or policy that required class members to work through their meal and rest periods in violation of California law. *See Mot.* 12:27–13:1. Claims based on this type of commonly applied policy or practice are generally sufficient for purposes of satisfying the requirements of Rule 23(b)(3). *See, e.g.*, *Wright v. Linkus Enters., Inc.*, 259 F.R.D. 468, 473 (E.D. Cal. 2009) (finding predominance "despite the existence of minor factual differences between individual class members," where the case involved "alleged policies that required class members to work without compensation, meal and rest periods, and/or reimbursement for expenses"); *Ferrell v. Buckingham Prop. Mgmt.*, No. 1:19-cv-00332-LJO-SAB, 2020 WL 291042, at *12 (E.D. Cal. Jan. 21, 2020) (finding predominance where "defendant's alleged failure to properly pay Class Members for all hours worked and to provide compliant meal and rest periods are alleged to

arise from Defendant's uniform policies, practices, and procedures"); *Kane v. Smithfield Direct, LLC*, No. CV 21-4832 PA (JCX), 2021 WL 8315401, at *3 (C.D. Cal. Dec. 29, 2021) ("Common claims predominate where a company-wide policy governs how employees spend their time and/or how they are paid."). As such, the Court concludes that common questions of law and fact similarly predominate here.

Under the superiority requirement of Rule 23(b)(3), a plaintiff must show that "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). As part of the analysis, courts are directed to weigh several non-exclusive factors outlined in Rule 23(b)(3): Class members' interests in individual actions, the extent and nature of any litigation concerning the controversy, the desirability of concentrating the litigation of the claims in the particular forum, and manageability difficulties. *See id.* (A)–(D); *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010).

As for superiority, requiring more than 419 Class Members to separately litigate their claims—with nearly identical issues and facts—would be inefficient and costly, resulting in duplicative and potentially conflicting proceedings. *See Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978) ("Numerous individual actions would be expensive and time-consuming and would create the danger of conflicting decisions as to persons similarly situated."). Class Members could face difficulty finding legal representation and could lose the incentive to bring their claims if forced to do so in isolation. *See In re Napster, Inc. Copyright Litig.*, No. C 04-1671 MHP, 2005 WL 1287611, at *8 (N.D. Cal. June 1, 2005) (finding superiority in part because "many small composers individually lack the time, resources, and legal sophistication to enforce their copyrights"). Lastly, it is likely that each individual class member could only pursue relatively small claims. As such, the class action facilitates the spreading of the litigation costs among the numerous injured parties, encourages recovery for unlawful activity, and is thus "the superior method for adjudicating this action." *Wright.*, 259 F.R.D. at 474. The Court therefore finds that Plaintiff has proven superiority and the requirements of Rule 23(b)(3) are satisfied.

C. Conclusion

Plaintiff has met the requirements for class certification under Rule 23. Therefore, the Court **CERTIFIES** the Class for settlement purposes only. The Court also **APPOINTS** Omid Nosrati, Esq. of NOSRATI LAW, APLC as Class Counsel and **APPOINTS** Plaintiff as Class Representative.

IV. Preliminary Approval of the Proposed Class Action Settlement

The Court must now determine whether the settlement reached is "fair, reasonable, and adequate" under Rule 23(e). *See* Fed. R. Civ. P. 23(e)(2).

A. Preliminary Approval Legal Standard

The approval of a class action settlement is a two-step process under Federal Rule of Civil Procedure 23(e) in which the court first determines whether a proposed class action settlement deserves preliminary approval and then, after notice is given to class members, whether final approval is warranted. *See In re Am. Apparel, Inc. S'holder Litig.*, No. CV 10-06352 MMM (CGx), 2014 WL 10212865, at *5 (C.D. Cal. July 28, 2014). "At the preliminary approval stage, a court determines whether a proposed settlement is within the range of possible approval and whether or not notice should be sent to class members." *True v. Am. Honda Motor Co.*, 749 F. Supp. 2d 1052, 1063 (C.D. Cal. 2010) (internal quotation marks omitted). The Court "must have information sufficient to consider the proposed settlement fully and fairly." *Manual for Complex Litigation (Fourth)*, § 13.14 (2004). Preliminary approval amounts to a finding that the terms of the proposed settlement warrant consideration by members of the class and a full examination at a final approval hearing. *Id*.

Preliminary approval 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." *Ma v. Covidien Holding, Inc.,* No. SACV 12-2161 DOC, 2014 WL 360196, at *4 (C.D. Cal. Jan. 31, 2014); *see also Eddings v. Health Net, Inc.*, No. CV 10-1744 JST (RZx), 2013 WL 169895, at *2 (C.D. Cal. Jan. 16, 2013).

After notice is given to the class, preliminary approval is followed by a review of the fairness of the settlement at a final fairness hearing and, if appropriate, a finding that it is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2); *see also Lane v. Facebook, Inc.*, 696 F.3d 811, 818 (9th Cir. 2012); *Hanlon.*, 150 F.3d at 1027. In making this determination,

> the district court must balance many factors: the strength of the plaintiffs' case; the risk, expense complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement.

Hanlon, 150 F.3d at 1026; *see also Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003); *Officers for Just. v. Civ. Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982) (noting that the list of factors is "by no means an exhaustive list").

The district court must approve or reject the settlement as a whole. *See Hanlon*, 150 F.3d at 1026 ("It is the settlement taken as a whole, rather than the individual component parts, that must be examined for overall fairness."). The court may not delete, modify, or rewrite particular provisions of the settlement. *See Dennis v. Kellogg Co.*, 697 F.3d 858, 868 (9th Cir. 2012); *Hanlon*, 150 F.3d at 1026.

B. Analysis of Settlement Agreement

i. Fair and Honest Negotiations

In general, evidence that a settlement agreement is arrived at through genuine arms-length bargaining with a mediator supports a conclusion that the settlement is fair. *See Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) ("We put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution."); *Sarabi v. Weltman, Weinberg & Reis Co., L.P.A.*, No. CV 10-1777 AJB (NLSx), 2012 WL 3809123, at *1 (S.D. Cal. Sept. 4, 2012) (holding that a settlement should be granted preliminary approval after the parties engaged in extensive negotiations); *Aarons v. BMW of N. Am., LLC*, No. CV 11-7667 PSG (CWx), 2014 WL 4090564, at *10 (C.D. Cal. Apr. 29, 2014) (declining to apply a presumption but considering the arms-length nature of the negotiations as evidence of reasonableness).

Here, the evidence supports the conclusion that the Settlement Agreement is fair and honest. Before engaging in mediation, the parties litigated the parking reimbursement claim, which the Court resolved on summary judgment. *See Nosrati Decl.* ¶ 20. Class Counsel engaged in significant discovery efforts including conducting pre-litigation investigation; reviewing time records and wage statements from a 30% sample size of the Class; reviewing various relevant company policies and procedures relating to the claims in Plaintiff's case; taking a person most qualified deposition; preparing and serving written discovery including requests for admissions, three sets of interrogatories, three sets of request for production of documents; and reviewing several thousand pages of documents produced by Defendant. *Id.* Class Counsel also retained the services of an expert consultant to prepare a damages analysis report in preparation for mediation. *Id.* ¶ 21. Further, parties reached a Settlement Agreement through a mediator's proposal after engaging in an arms-length mediation conducted by Mr. Benardo. *Id.* ¶ 6; *Mot.* 15:25–16:2.

The time and effort spent on discovery, as well as mediation with Mr. Benardo, weigh in favor of preliminary approval of the Settlement. *See Hanlon*, 150 F.3d at 1029. Nothing indicates that the negotiations were dishonest or collusive in any way, and the discovery conducted in this case suggests that the parties were well informed and had sufficient information to assess the merits of their claims. *See Glass v. UBS Fin. Servs., Inc.*, No. CV 06-4068 MMC, 2007 WL 221862, at *5 (N.D. Cal. Jan. 26, 2007) (reasoning that the parties having undertaken informal discovery prior to settling supports approving the class action settlement). The Court is therefore satisfied that the Settlement Agreement is the product of fair and honest negotiations.

ii. Settlement Amount

To evaluate whether a settlement falls within the range of possible approval, "courts primarily consider plaintiffs' expected recovery balanced against the value of the settlement offer." *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007).

Plaintiff estimates Defendant's maximum liability for the remaining claims regarding meal and rest violations as follows:

Claim	Maximum Exposure
Meal break	$136,626
Unpaid wages	$90,426
Rest break	$302,072
Waiting time	$333,922
Paystub penalty	$94,750
Regular rate of pay	$763,463
Total	**$1,721,259**

Mot. 18:25–21:16; *see also id.* 20:25–21:7.

Plaintiff states that her claims faced significant challenges to establish class-wide liability. For example, Defendant produced documents in discovery supporting its argument that their policies complied with the requirements of *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), and as such there was "a substantial risk" that Plaintiff and the Class Members "would not prevail in this action." *Id.* 20:5–24. Further, there existed a dispute as to whether Defendant paid meal premiums for the alleged meal period violations. *See Mot.* 18:14–24; *Nosrati Decl.* ¶¶ 28–29. Lastly, Defendant argued during mediation that in Plaintiff's deposition, she testified "that no one ever told her she could not take [] rest breaks." *Mot.* 18:17–18.

In view of the estimated total liability of $1.7 million, the Gross Settlement of $225,000 represents 13% of the estimated damages for the Class. Though the Court recognizes that 13% of the estimated damages is on the low end of class settlement awards for receiving approval, it falls within the range of possible approval, particularly given the risks and costs of litigation. *See e.g., Stovall-Gusman v. W.W. Granger, Inc.*, No. 13–cv–02540–HSG, 2015 WL 3776765, at *12 (N.D. Cal. June 17, 2015) (approving a settlement amount in wage and hour action of approximately 10% of what the class might have been awarded had they succeeded at trial); *Bravo v. Gale Triangle, Inc.*, No. CV16-03347 BRO (GJSx), 2017 WL 708766, at *10 (C.D. Cal. Feb. 16, 2017) ("Plaintiffs argue that a settlement for fourteen percent recovery of Plaintiffs' maximum recovery is reasonable under the circumstances. . . . The Court agrees.").

"[T]he risk of continued litigation balanced against the certainty and immediacy of recovery from the Settlement" is a relevant factor. *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 489 (E.D. Cal. 2010) (citing *In re Mego*, 213 F.3d at 458). The Court finds that the Gross Settlement does confer benefits on Class Members who would face significant risk of no recovery and ongoing expenses if forced to proceed with litigation. *See Mot.* 17:19–22; 21:11–16; *Nosrati Decl.* ¶ 32. Plaintiff has extensively detailed the defenses undermining Plaintiff's ability to prove liability, as well as the risks to maintaining class certification. *See* 17:17–21:16; *Nosrati Decl.* ¶¶ 22–23. Given this reality, the settlement amount favors preliminary approval.

iii. Attorneys' Fees and Costs

When approving attorneys' fees in common fund cases, courts in the Ninth Circuit have discretion to apply the percentage-of-the-fund method or the lodestar method to determine reasonable attorneys' fees. *See Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000); *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 944–45 (9th Cir. 2011) (finding that when a settlement establishes a common fund for the benefit of a class, courts may use either method to gauge the reasonableness of a fee request, but encouraging courts to employ a second method as a cross-check after choosing a primary method). If employing the percentage-of-the-fund method, the "starting point" or "benchmark" award is 25 percent of the total settlement value. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048–50 (9th Cir. 2002); *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993). A court may exceed the benchmark but must explain its reasons for so doing. *See Powers*, 229 F.3d at 1255–57.

Calculation of the lodestar, which measures the lawyers' investment of time in the litigation, provides a check on the reasonableness of the percentage award. *Vizcaino*, 290 F.3d at 1050. To determine attorneys' fees under the lodestar method, a court must multiply the reasonable hours expended by a reasonable hourly rate. *See In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1294 n.2 (9th Cir. 1994). The court may then enhance the lodestar with a "multiplier," if necessary, to arrive at a reasonable fee. *Id.*

In this case, Class Counsel is seeking twenty-five percent of the Gross Settlement Fund ($56,250) in attorneys' fees, and actual litigation costs and expenses not to exceed twenty-five thousand dollars ($25,000). *Mot.* 5:18–25.

While the requested attorneys' fees are at the benchmark of twenty-five percent of the total settlement value, Plaintiff has not provided information for the Court to perform a lodestar reasonableness check on the requested fees.

Ultimately the Court will determine the reasonableness of the requested attorneys' fees and costs awards when ruling on Plaintiff's motion for final approval. Before the final approval hearing, the Court **ORDERS** Class Counsel to submit a memorandum further justifying the attorneys' fees and costs. Class Counsel is also instructed to provide the requested hourly rate and hours expended in this case so that the Court can calculate the lodestar value and use it to cross-check the reasonableness of the fees and costs award. Finally, Class Counsel must submit a detailed summary of its costs and expenses for the Court's consideration.

iv. Enhancement Awards

"Incentive awards are fairly typical in class action cases." *Rodriguez*, 563 F.3d at 958. When considering requests for incentive awards, courts consider five principal factors:

> (1) [T]he risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.

See Van Vranken v. Atl. Richfield Co., 901 F. Supp. 294, 299 (N.D. Cal. 1995).

Further, courts typically examine the propriety of an incentive award by comparing it to the total amount other class members will receive. *See Staton*, 327 F.3d at 975; *Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 335 (N.D. Cal. 2014) ("To determine the reasonableness of an incentive payment, courts consider the proportionality between the incentive payment and the range of class members' settlement awards.").

Plaintiff Hubert seeks an enhancement award no larger than $5,000 in addition to her individual settlement payment. *Mot.* 4:14–16; *Settlement* ¶ 33. At first glance, the enhancement award appears disproportionately high when compared to the individual settlement share of the Class Members, which is $283. But ultimately, the Court will determine the reasonableness of the requested enhancement awards when ruling on Plaintiff's motion for final approval. Before the final approval hearing, the Court **ORDERS** Class Counsel to submit a memorandum further justifying Plaintiff's award as a percentage of the total settlement, as well as the disparity between the award and the average settlement amount for each Class Member.

v. Administration Costs

The Settlement Agreement provides that the parties will pay CPT Group, or any other third-party class action settlement administrator agreed to by the Parties and approved by the Court, no more than $20,000 to administer the Settlement. *Settlement* ¶¶ 26–27. This request is seemingly reasonable considering the estimated size of the Class—419 individuals—and the costs and expenses associated with administering the notices to the claimants. *See Mot.* 4:23–5:3; *Ching v. Siemens Indus.*, No. 11–cv–04838–MEJ, 2014 WL 2926210, at *2 (N.D. Cal. June 27, 2014) (approving an estimated $15,000 claims administrator fee for sixty-eight claims); *Ozga v. U.S. Remodelers, Inc.*, No. C 09–05112 JSW, 2010 WL 3186971, at *2 (N.D. Cal. Aug. 9, 2010) (granting $10,000 to the claims administrator for 156 claims).

vi. Remaining Funds

The Settlement Agreement provides that if any checks remain uncashed following the distribution of the funds or are returned as undeliverable, the checks will be sent to the California unclaimed fund. *Settlement* ¶ 52.

As courts have found it permissible for unclaimed settlement funds "to escheat to the government," the Court approves the distribution of the uncashed settlement checks to the California unclaimed fund as fair and reasonable. *In re Google Inc. St. View Elec. Commc'ns Litig.*, 21 F.4th 1102, 1110 (9th Cir. 2021); *Crane v. Jeld-Wen, Inc.*, No. 17cv455-L(WVG), 2019 WL 13267083, at *4 (S.D. Cal. Apr. 17, 2019) ("[T]he payment of any uncashed Settlement checks to the State of California – Unclaimed Funds Department is approved as fair and reasonable.").

vii. PAGA Settlement and Release

In response to the Court's concerns regarding the PAGA Settlement and Release, *see Order Denying Prelim. Approval* 7–9, "the parties have revised the [Settlement] Agreement to remove reference to 'PAGA' Allegations because (1) there is no PAGA release in this action and (2) any PAGA claim was rendered moot after the granting of partial summary judgment." *Mot.* 22:4–6; *Nosrati Decl.* ¶ 30 ("The Settlement Agreement does not include a PAGA release and the newly executed Agreement has removed reference to PAGA in paragraph 22.").

Plaintiff explains that "the only Plaintiffs that brought an action under PAGA were Plaintiffs Svengert and Martinez." *Mot.* 22:7–9. As the "only [c]lass that Plaintiffs[] Svengert and Martinez were representing were those employees 'whose pay was deducted or not

reimbursed for necessary business-related expenses, including parking expenses,'" *id.* 22:18–20, "when partial summary judgment was granted and the parking reimbursement claim was dismissed, there were no further claims that were being presented by [Plaintiffs] Svengert and Martinez," *id.* 22:21–24. Accordingly, Plaintiff argues that "there is no PAGA penalty claim left to adjudicate." *Id.* 22:24.

Plaintiff has addressed the Court's concerns regarding the PAGA Settlement and Release. Based on the additional information, the Court does not need to make a finding regarding the reasonableness of a PAGA settlement as it understands PAGA claim is not part of the Settlement Agreement.

viii. FLSA Release

In response to the Court's concern that the Settlement Agreement's release of the class claims via the opt-out mechanism was improper under FLSA, *see Order Denying Renewed Mot. for Prelim. Approval* 2, Plaintiff and Defendant Plaintiff and Defendant have executed a revised Settlement Agreement and updated the Proposed Notice. *Mot.* 23:2–11.

The Settlement Agreement states "[b]y operation of cashing, depositing or otherwise negotiating their Individual Settlement Payment checks, Class Members will be deemed to have opted-in to the settlement for purposes of [FLSA]." *Settlement* ¶ 48a; *see also Proposed Notice* § 7. Courts in the Ninth Circuit have found such FLSA waivers enforceable where there is no concern that the settlement agreement adequately compensates the class for the release of all claims." *See Dawson v. Hitco Carbon Composites, Inc.*, No. CV 16-7337 PSG (FFMx), 2019 WL 6138467, at *7 n.2 (C.D. Cal. July 9, 2019). Accordingly, the Court finds that the Settlement Agreement contains a proper FLSA waiver. Accordingly, because the Court continues to find that the Settlement Agreement is adequate, the Settlement Agreement contains a proper FLSA waiver. *Contreras v. Armstrong Flooring, Inc.*, No. CV 20-3087 PSG (SKx), 2021 WL 4352299, at *8 (C.D. Cal. July 6, 2021); *see also see Order Denying Renewed Mot. for Prelim. Approval* 3–4.

C. Notice to Class Members

Before the final approval hearing, the Court requires adequate notice of the settlement be given to all class members. Federal Rule of Civil Procedure 23 provides:

> For any class certified under Rule 23(b)(3) . . . the court must direct to class members the best notice that is practicable under the circumstances, including individual notice

> to all members who can be identified through reasonable effort. . . . The notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

Fed. R. Civ. P. 23(c)(2)(B). "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) (quoting *Mendoza v. Tucson Sch. Dist. No. 1*, 623 F.2d 1338, 1352 (9th Cir. 1980)).

Here, Plaintiffs have provided a proposed Notice of Class Action Settlement. *See Proposed Notice.* It sets forth in clear language: (1) the nature of the action and the essential terms of the Settlement; (2) the meaning and nature of the Class; (3) Class Counsel's application for attorneys' fees and the proposed service award payments for Plaintiff; (4) the formula for calculation and distribution of the Net Settlement Amount; (5) how to opt out of the Settlement; (6) how to object to the Settlement; (7) the Court's procedure for final approval of the Settlement; and (8) how to obtain additional information regarding this case and the Settlement. *See generally id.*

The settlement administrator will mail the Class the Proposed Notice within 30 days of receiving the class list detailing the Settlement Agreement's terms along with the total workweeks for each Class Member and an estimate of each Class Member's individual settlement payment. *Setllement* ¶¶ 40, 42. The settlement administrator will also perform address verification and skip-tracing in a further attempt to locate other Class Members. *Id.* ¶ 41. Class Members will then have 60 days from the initial mailing of the Proposed Notice to opt out of the Settlement Agreement or object to its terms. *Id.* ¶ 25; *Proposed Notice* §§ 10–11.

Having reviewed the Proposed Notice in conjunction with the Settlement Agreement, the Court finds the Proposed Notice satisfactory.

V. Conclusion

For the foregoing reasons, the Court **GRANTS** Plaintiff's motion for preliminary approval of class action settlement. The Court **PRELIMINARILY APPROVES** the Settlement, **APPOINTS** Plaintiff as Class Representative, **APPOINTS** Omid Nosrati, Esq. of NOSRATI LAW, APLC as Class Counsel, **APPOINTS** CPT Group as the Settlement Administrator, and **APPROVES** the proposed Class Notice Form. The final approval hearing is set for **July 19, 2024.**

At least thirty days before the final approval hearing and in addition to the motion for final approval of class action settlement, the Court **ORDERS** Plaintiff to file:

- A memorandum justifying the attorneys' fees and costs reward request, and providing more information on the hours worked by Plaintiff's counsel and hourly rate so that the Court may calculate the lodestar figure to determine reasonableness.

- A memorandum justifying Plaintiff's enhancement award.

IT IS SO ORDERED.