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CENTRAL DISTRICT OF CALIFORNIA
BY: CW DEPUTY

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

RODERICK WRIGHT, et al.,

Plaintiffs,

v.

RENZENBERGER, INC.,

Defendant.

Case No. CV 13-6642 FMO (AGRx)

ORDER RE: MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT

Having reviewed and considered all the briefing filed with respect to plaintiffs' Renewed Motion for Preliminary Approval of Class Action Settlement (Dkt. 144, "Motion") and the oral argument presented at the hearing on August 29, 2019, the court concludes as follows.

BACKGROUND

On July 15, 2013, Roderick Wright, Fernando Olivarez, and Marcus Haynes, Jr. filed a class action complaint in Los Angeles County Superior Court against Renzenberger, Inc. ("Renzenberger" or "defendant"). (See Dkt. 1, Notice of Removal, "NOR"). On September 11, 2013, defendant removed the case to this court. (See id.). In their Fourth Amended Complaint ("4AC"), plaintiffs Roderick Wright ("Wright"), Fernando Olivarez ("Olivarez"), Marcus Haynes, Jr. ("Haynes"), and Michael Watson ("Watson") (collectively, "plaintiffs") asserted claims for: (1) failure to pay minimum wages under California Labor Code ("Labor Code") §§ 1194, 1194.2, 1197, and California Industrial Welfare Commission ("IWC") Wage Order No. ("Wage Order No.") 9-2001; (2) failure to pay overtime under Labor Code §§ 510, 1194, and Wage Order No. 9-2001; (3)

waiting time penalties under Labor Code § 203; (4) failure to provide accurate wage statements under Labor Code § 226; (5) failure to authorize and permit rest periods under Labor Code § 226.7 and Wage Order No. 9-2001; (6) unfair business practices in violation of California Business & Professions Code §§ 17200 et seq. ("UCL") based on failure to pay all wages owed, provide accurate wage statements, and authorize and permit rest breaks; and (7) civil penalties under the California Private Attorneys General Act, Cal. Labor Code §§ 2698, et seq. ("PAGA"). (See Dkt. 96, 4AC at ¶¶ 49-91). Plaintiffs assert these claims on behalf of the following five classes: (1) Separate Pay Class; (2) Pay Averaging Class; (3) Wage Statement Class; (4) Waiting Time Class; and (5) Rest Break Class. (See id. at ¶ 35). In July 2019, plaintiffs filed the operative Fifth Amended Complaint ("5AC"), which added a claim under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201, et seq. (See Dkt. 143, 5AC at ¶¶ 37-41).

The judge previously assigned to this case certified the Separate Pay Class, but denied certification of the Pay Averaging Class, the Wage Statement Class, the Waiting Time Class, and the Rest Break Class. (See Dkt. 37, Court's Order of April 14, 2014, at 15). On appeal, the Ninth Circuit reversed the district court's decision as to the Pay Averaging Class and the Wage Statement Class, vacated and remanded as to the Waiting Time Class, and affirmed as to the Rest Break Class. See Wright v. Renzenberger, Inc., 656 F.Appx. 835, 840 (9th Cir. 2016). Plaintiffs amended their rest break allegations and filed a renewed Motion for Class Certification of [the] Rest Break Class, (see Dkt. 100), which the court subsequently granted.[1] (See Dkt. 115, Court's Order of September 30, 2017, at 18). On January 23, 2018, the Ninth Circuit denied defendant's petition for permission to appeal to court's class certification order. (See Dkt. 117-1, Ninth Circuit Order).

On March 8, 2018, the court granted partial summary judgment for plaintiffs as to liability on plaintiffs' Separate Pay, Pay Averaging, Waiting Time Penalties, Wage Statement, and Rest Break claims, and for defendant as to plaintiffs' UCL claim based on the Wage Statement claim

[1] On November 30, 2016, the court granted plaintiffs' unopposed renewed motion to certify the Waiting Time Class. (See Dkt. 80, Court's Order of November 30, 2016).

and the PAGA claim (Claim No. 7).[2] (Dkt. 118, Court's Order of March 8, 2019, ("Summary Judgement Order") at 30). On April 11, 2018, defendant filed a motion to certify the rest break ruling in the summary judgment order for appeal. (See Dkt. 122, Motion to Certify). Before the court had ruled on the motion to certify the rest break ruling for appeal, and after three years of litigation, the parties reached a settlement in September 2018. (See Dkt. 130, Notice of Class Action Settlement).

Plaintiffs now seek an order: (1) preliminarily approving the Settlement Agreement; (2) approving the notice documents and directing dissemination of the class notice; (3) appointing CPT Group, Inc., ("CPT") as the Settlement Administrator; and (4) scheduling a final approval hearing. (See Dkt. 144, Motion at 1).

The Settlement is on behalf of the individuals who are members of the classes that have previously been certified by the court:

1. Separate Pay Class: All road drivers employed by Renzenberger in California at any time from August 1, 2011 through July 15, 2012 who were paid a piece rate that Renzenberger deemed to cover non-driving tasks;
2. Pay Averaging Class: All road drivers employed by Renzenberger in California at any time from August 1, 2011 through February 22, 2014 whose minimum wage entitlement was determined by dividing total weekly compensation by total weekly hours worked;
3. Wage Statement Class: All yard drivers and road drivers employed by Renzenberger in California at any time from July 16, 2012 through February 8, 2014 who received a wage statement that either listed the overtime rate as just one-half of the regular rate (as opposed to one and one-half times the regular rate), or equivalent to the regular rate

[2] Plaintiffs dismissed their PAGA claim "in its entirety." (Dkt. 110, Joint Brief at 1).

(as opposed to twice the regular rate for double time), or, alternatively, did not list the overtime rate at all;

4. Waiting Time Class: All members of the Separate Pay Class and the Pay Averaging Class whose employment with Renzenberger ended at any time from August 1, 2011 through November 30, 2016; and

5. Break Class: All yard drivers and road drivers employed by Renzenberger in California from August 1, 2011 through September 30, 2017 who worked one or more days of three and one half (3 ½) hours or more.

(See Dkt. 144-4, Stipulation and Settlement of Class Action Claims ("Settlement Agreement") at 1-2; Dkt. 144-1, Memorandum of Points and Authorities in Support of Renewed Motion for Preliminary Approval of Class Action Settlement ("Memo") at 6-7). The individuals who are members of these classes have already received notice and an opportunity to opt-out. (See Dkt. 144-1, Memo at 7). Twenty-one individuals opted-out, (Dkt. 144-5, Declaration of Melissa Meade on Behalf of Administrator ("Administrator Decl.") at ¶ 7), resulting in a class of 3,729 members. (See Dkt. 144-1, Memo at 7).

Pursuant to the settlement, Renzenberger will pay a non-reversionary settlement amount of $4,550,000, which will be used to pay the class and the FLSA collection action claims,[3] settlement administrator expenses, attorney's fees and costs, and class representative service awards. (See Dkt. 144-4, Settlement Agreement at ¶ 4). Pending court approval, the settlement provides for up to $1,516,666.60 (i.e., one third of the gross settlement fund) in attorney's fees, (id. at ¶ 5(d)), costs not to exceed $40,000, (id.), and incentive payments of up to $40,000.[4] (Id. at 5(c)). The proposed settlement administrator, CPT shall be paid $35,000 from the gross

[3] The court finds that the FLSA collective should be preliminarily certified. See, e.g., Campbell v. City of Los Angeles, 903 F.3d 1090, 1112-13 (9th Cir. 2018) (noting that the FLSA "imposes a lower bar than Rule 23"). FLSA collective action members will be required to submit an opt-in form. (See Dkt. 144-4, Settlement Agreement at ¶ 5(b)).

[4] The $40,000 would be allocated as follows: $15,000 to Wright, $10,000 to Olivarez, $10,000 to Haynes, and $5,000 to Watson. (See Dkt. 144-4, Settlement Agreement at ¶ 5(c)).

settlement amount. (See id. at ¶¶ 4, 5(e); Dkt. 144-1, Memo at 12; Dkt. 144-6, CPT Flat Fee Quote). The resulting net settlement amount will be used to pay class members. All settlement class members will automatically be paid individual settlement shares,[5] and those who return a signed FLSA Opt-In Form will receive an additional amount allocated to the FLSA claim. (See Dkt. 144-4, Settlement Agreement at ¶ 5(b)).

The Settlement Fund is non-reversionary and any uncashed checks mailed to class members will be sent to the California Controller's Office of Unclaimed Property in the employee's name after the passage of 180 days. (See Dkt. 144-4, Settlement Agreement at ¶¶ 4, 5(b)).

LEGAL STANDARD

Federal Rule of Civil Procedure 23 provides that "[t]he 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[6] 23(e)] is the protection of th[e] class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties." Officers for Justice v. Civil Serv. Comm'n of the City & Cty. of S.F., 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 v. Boeing Co., 327 F.3d 938, 959 (9th Cir. 2003); 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 only on finding that it is fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2).

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[5] Each certified class member shall be awarded points pursuant to the following formula: two points for each workweek an individual worked as a road driver between August 1, 2011 and February 22, 2014; one point for each workweek an individual worked as a road driver between February 23, 2014 and the date of preliminary approval; one point for each workweek a class member worked as a yard driver between August 1, 2011 and the date of preliminary approval; and four points for qualifying membership in the waiting time class. (Dkt. 144-4, Settlement Agreement at ¶ 5(b)). Each class member's share of the net settlement fund will be equivalent to the ratio of points earned by the individual divided by the total combined points earned by all class members. (Id.). Applicable employee and employer payroll taxes will be deducted. (Id.).

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

"[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." In re Bluetooth Headset Prods. Liab. Litig., 654 F.3d 935, 946 (9th Cir. 2011). "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." Id.

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 Harris, 2011 WL 1627973, at *7 (same); Cordy v. USS-Posco Indus., 2013 WL 4028627, *3 (N.D. Cal. 2013) ("Preliminary approval of a settlement and notice to the proposed class is appropriate if the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious

deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval.") (internal quotation marks omitted).

DISCUSSION

I. 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, after the parties engaged in extensive discovery, (see Dkt. 144-3, Declaration of Matthew B. Hayes ("Hayes Decl.") at ¶¶ 35-37), and considerable motion and appellate practice, including several motions for class certification and cross motions for summary judgment, (see id. at ¶¶ 13-30), the parties participated in protracted arms-length settlement negotiations over a six-month period. (See id. at ¶ 47). Although the parties' mediation before a private mediator was unsuccessful, (see id. at ¶ 48), the parties continued to discuss settlement. (See id. at ¶ 49).

In light of defendant's financial condition and inability to satisfy a large judgment as

confirmed by plaintiffs' forensic expert,[7] plaintiffs' counsel determined that further settlement negotiations should be conducted in coordination with a separate wage and hour class action brought against defendant by Kristina McConville, another driver. (See id. at ¶ 50); McConville v. Renzenberger, Inc., Case No. CV 17-2972 FMO (JCx) ("McConville Action"). As a result, in September 2018, the parties reached a tentative global settlement agreement of $7 million, of which two-thirds would be allocated to this action, and the remaining one-third would be allocated to the McConville Action.[8] (Dkt. 144-3, Hayes Decl. at ¶¶ 56-57).

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

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

1. **Recovery for Class Members.**

As described above, the class members will share in a gross settlement amount of $4,550,000. (See 144-4, Settlement Agreement at ¶ 4). If the anticipated attorney's fees, costs, incentive awards, and settlement administrator's costs are approved, the net settlement amount will be $2,918,333.40, (see Dkt. 144-1, Memo at 13), with an average payment of $700. (See id. at 1, 21-22). While the damages analysis conducted by class counsel and their expert projected a potential recovery in this case between $10 and $12 million, (see id. at 22; Dkt. 144-3, Hayes

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[7] Plaintiffs' forensic expert determined that there was a significant chance that Renzenberger would be unable to satisfy a judgment in excess of $7 million and that a payment in excess of $6 million would place the company under financial pressure. (Dkt. 144-3, Hayes Decl. at ¶ 45).

[8] The parties determined the allocation based on the fact that the two cases were at different stages, involved different class periods, and faced different levels of risk with class certification and a favorable class summary judgment having already been secured in the instant action. (See Dkt. 144-3, Hayes Decl. at ¶ 57).

Decl. at ¶ 71), class counsel consider the settlement to be "fair, reasonable, and adequate, and in the best[] interest" of the class given a number of risks. (See Dkt. 144-3, Hayes Decl. at ¶¶ 70-72). Significantly, there was a "very real likelihood [that] Renzenberger would be unable to satisfy a judgment for the maximum amount of projected damages" as confirmed by plaintiffs' expert. (See id. at ¶ 75). The settlement here ensures a recovery between 37% and 45% of the maximum projected recovery. (See id. at ¶ 76).

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

2. **Release of Claims**.

The court also considers whether the settlement contains an overly broad release of liability. See 4 Newberg on Class Actions § 13:15, at p. 326-27 (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 will release defendant from "all claims, other than claims under the

federal Fair Labor Standards Act ('FLSA'), that were or could have been pled based on the factual allegations in the operative complaint." (Dkt. 144-4, Settlement Agreement at ¶ 2(a)). In addition, if a class member submits the FLSA Opt-in Form, he or she will release "all claims that were or could have been pled under federal law based on the factual allegations in the operative complaint." (Id. at ¶ 2(b)). 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 representatives, (see id. at ¶ 2(c)), the court finds that the release adequately balances fairness to absent class members and recovery for plaintiffs with defendant's business interest in ending this litigation. See, e.g., Fraser, 2012 WL 6680142, at *4 (recognizing defendant's "legitimate business interest in 'buying peace' and moving on to its next challenge" as well as the need to prioritize "[f]airness to absent class member[s]").

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

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

The Settlement Agreement provides that plaintiffs may apply to the court for an award of up to $40,000 as service awards, allocated as follows: $15,000 to Wright, $10,000 to Olivarez, $10,000 to Haynes, and $5,000 to Watson. (See Dkt. 144-4, Settlement Agreement at ¶ 5(c)). Here, the class representatives took risks in agreeing to serve as named plaintiffs and made themselves available to class counsel. (See Dkt. 144-7, Declaration of Roderick Wright ("Wright

Decl.) at ¶¶ 2-18; Dkt. 144-8, Declaration of Fernando Olivarez ("Olivarez Decl.") at ¶¶ 2-16; Dkt. 144-9, Declaration of Marcus Haynes ("Haynes Decl.") at ¶¶ 2-15; Dkt. 144-10, Declaration of Michael Watson ("Watson Decl.") at ¶¶ 4-15). With the exception of Watson, they all had their deposition taken. (See Dkt. 144-7, Wright Decl. at ¶ 11; Dkt. 144-8, Olivarez Decl. at ¶ 10; Dkt. 144-9, Haynes Decl. at ¶ 9). In addition, the class representatives were required to sign a broader release than the one to which the class members are subject. (See Dkt. 144-4, Settlement Agreement at ¶ 2(c)). Finally, the class representatives did not condition their approval of the settlement on the incentive payments. (See, generally, id. at ¶ 5(c)). Nevertheless, although the class representatives appear to have been diligent and taken on substantial responsibility in litigating the case, the court believes a $10,000 service payment for Oliverez and Haynes is excessive. The court tentatively finds that an incentive payment of $10,000 for Wright is warranted, but that incentive payments of no more than $5,000 is appropriate for Olivarez and Hayes. 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). With respect to Watson, who did not have his deposition taken, the court finds that an incentive payment of no more than $2,500 is appropriate.

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). 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 "[n]otice 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." In re Hyundai and Kia Fuel Econ. Litig., 926 F.3d 539, 567 (9th Cir. 2019) (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 Res., 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. 144-4, Settlement Agreement at ¶ 4). Class members will receive notice by first class mail, (see id. at ¶ 8(b)), which will consist of the Notice of Proposed Class Action Settlement ("Notice") (see id., Exh. 2), and a FLSA Opt-In Form and Release of Claims. (Id., Exh. 3 ("Opt-In Form")) (collectively, "Notice Packet").

The Notice describes the nature of the action and the claims for relief. (See Dkt. 144-4, Exh. 2, Notice at 2-3); Fed. R. Civ. P. 23(c)(2)(B)(i) & (iii). It provides the definition of the classes, (see Dkt. 144-4, Exh. 2, Notice at 2-3); see also Fed. R. Civ. P. 23(c)(2)(B)(ii), and explains the terms of the settlement, including the settlement amount, the distribution of that amount, and the release of claims. (See Dkt. 144-4, Exh. 2, Notice at 4-7). It includes an explanation that lays out the class members' options under the settlement: they may opt in to the FLSA claim and/or object

to the settlement but still remain in the class.[9] (Id. at 1, 4-7). It separately informs collective action class members that in order to receive a payment for their FLSA claims, they must complete and submit the enclosed Opt-In Form. (See id. at 6). Finally, the Notice provides information about the Final Fairness Hearing. (See id. at 7-8).

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.

In short, 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 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. Plaintiffs' Renewed Motion for Preliminary Approval of Class Action Settlement **(Document No. 144)** is **granted** upon the terms and conditions set forth in this Order.

2. 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.

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[9] The Notice does not include the option of opting out of the settlement, since class members were previously provided an opportunity to opt out. See Low, 881 F.3d at 1121-22 (holding that "due process requires that class members be given a single opportunity to opt out of a Rule 23(b)(3) class") (internal quotations omitted); Officers of Justice, 688 F.2d at 635 ("[T]o hold that due process requires a second opportunity to opt out after the terms of the settlement have been disclosed to the class would impede the settlement process so favored in the law."); see also Denny v. Deutsche Bank AG, 443 F.3d 253, 271 (2d Cir. 2006) (holding that while "Fed. R. Civ. P. 23(e) provides that a court, in its discretion, may refuse to approve a settlement unless it affords a new opportunity for prospective class members to opt out of the class, . . . [n]either due process nor Rule 23(e)(3) require[] . . . a second opt-out period").

3. The court approves the form, substance, and requirements of the class Notice, (Dkt. 144-4, Settlement Agreement, Exh. 2), and the Opt-Out Form. (Id. at Exh. 3). 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.

4. CPT shall complete dissemination of class notice, in accordance with the Settlement Agreement, no later than **January 17, 2020**.

5. Plaintiffs shall file a motion for an award of class representative incentive payments and attorney's fees and costs no later than **February 14, 2020,** and notice it for hearing for the date of the final approval hearing set forth below.

6. Any class member who wishes to: (a) object to the settlement, including the requested attorney's fees, costs and incentive awards; or (b) opt in to the FLSA collection action must file his or her objection to the settlement and or FLSA Opt-In Form no later than **March 17, 2020**, in accordance with the Notice.

7. Plaintiffs shall, no later than **April 30, 2020,** 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.

8. Defendant may file and serve a memorandum in support of final approval of the Settlement Agreement and/or in response to objections no later than **May 7, 2020**.

9. 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 awards, shall, no later than **May 12, 2020**, file with the court a Notice of Intent to Appear at Fairness Hearing.

10. A final approval (fairness) hearing is hereby set for **May 21, 2020,** 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.

11. 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 25th day of November, 2019.

/s/
Fernando M. Olguin
United States District Judge