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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
CIVIL MINUTES—GENERAL

Case No. **EDCV 20-1569 JGB (SHKx)** Date April 8, 2021

Title ***Richard Tobin, et al. v. Ryder Truck Rental, Inc.***

Present: The Honorable **JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE**

**MAYNOR GALVEZ**

Deputy Clerk

Not Reported

Court Reporter

Attorney(s) Present for Plaintiff(s):

None Present

Attorney(s) Present for Defendant(s):

None Present

**Proceedings: Order (1) GRANTING Plaintiff's Motion for Preliminary Approval of Class Action Settlement (Dkt. No. 23); and (2) VACATING the April 12, 2021 Hearing (IN CHAMBERS)**

Before the Court is Richard Tobin's ("Plaintiff") Motion for Preliminary Approval of Class Action Settlement. ("Motion," Dkt. No. 23.) The Court finds this matter appropriate for resolution without a hearing. See Fed. R. Civ. P. 78; L.R. 7-15. After considering the papers filed in support of the matter, the Court GRANTS the Motion.

### I. BACKGROUND

On April 21, 2020, Plaintiff filed a Complaint in the Riverside County Superior Court alleging two causes of action against Defendant Ryder Truck Rental, Inc. ("Defendant"), for violation of Cal. Labor Code §§ 226 and 2698 et seq., on behalf of himself and all others similarly situated. ("Complaint," Dkt. No. 1-1.) Defendant removed to this Court on August 7, 2020. (Dkt. No. 1.) On March 12, 2021, Plaintiff filed this Motion, supporting declarations, and a Proposed Class Action Settlement (Motion; "Proposed Settlement," Dkt. No. 23-7.)

Plaintiff alleges that Defendant, a Florida corporation operating in California, failed to identify the applicable hourly rates and corresponding number of hours worked on Plaintiff's wage statements. (Complaint ¶¶ 9, 30.)

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## II. LEGAL STANDARD

Approval of a class action settlement requires certification of a settlement class. La Fleur v. Med. Mgmt. Int'l, Inc., 2014 WL 2967475, at \*2–3 (C.D. Cal. June 25, 2014). A court may certify a class if the plaintiff demonstrates the class meets the requirements of Federal Rule of Civil Procedure 23(a) and at least one of the requirements of Rule 23(b).<sup>1</sup> See Fed. R. Civ. P. 23; see also Valentino v. Carter-Wallace, Inc., 97 F.3d 1227, 1234 (9th Cir. 1996). Rule 23(a) contains four prerequisites to class certification: (1) the class must be so numerous that joinder is impracticable; (2) there must be questions of law or fact common to the class; (3) the claims of the class representative must be typical of the other class members; and (4) the representative parties must fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a). Rule 23(b) requires one of the following: (1) prosecuting the claims of class members separately would create a risk of inconsistent or prejudicial outcomes; (2) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive or declaratory relief benefitting the whole class is appropriate; or (3) common questions of law or fact predominate so that a class action is superior to another method of adjudication. Fed. R. Civ. P. 23(b).

Class action settlements must be approved by the court. Fed. R. Civ. P. 23(e). At the preliminary approval stage, the Court “must make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms.” Id. “The settlement need only be potentially fair, as the Court will make a final determination of its adequacy at the hearing on Final Approval.” Acosta v. Trans Union, LLC, 243 F.R.D. 377, 386 (C.D. Cal. 2007) (emphasis in original). To determine whether a settlement agreement is potentially fair, a court considers the following factors: the strength of the plaintiff’s 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. Staton v. Boeing Co., 327 F.3d 938, 959 (9th Cir. 2003).

## III. CONDITIONAL CERTIFICATION OF THE PROPOSED SETTLEMENT CLASS

The class is defined as follows:

All current and former non-exempt employees of Defendant in the State of California who were paid “Premium” and/or “ONCALPAY” wages at any time between April 6, 2019 through the present.

(Mot. at 8.) The Court first addresses the Rule 23(a) requirements and then turns to the Rule 23(b) requirements.

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<sup>1</sup> All references to “Rule” in this Order refer to the Federal Rules of Civil Procedure.

## A. Requirements of Rule 23(a)

### 1. Numerosity

A class satisfies the prerequisite of numerosity if it is so large that joinder of all class members is impracticable. Hanlon v. Chrysler Corp., 150 F.3d 1011, 1019 (9th Cir. 1998). To be impracticable, joinder must be difficult or inconvenient, but need not be impossible. Keegan v. Am. Honda Motor Co., 284 F.R.D. 504, 522 (C.D. Cal. 2012). There is no numerical cutoff for sufficient numerosity. Id. However, 40 or more members will generally satisfy the numerosity requirement. Id. A plaintiff has the burden to establish that this requirement is satisfied. United Steel, Paper & Forestry, Rubber, Mfg. Energy v. Conoco Phillips Co., 593 F.3d 802, 806 (9th Cir. 2010). Here, Plaintiff estimates 358 individuals fall within the class definition. (Mot. at 15.) Accordingly, the Court concludes that the numerosity requirement is satisfied.

### 2. Commonality

The commonality requirement is satisfied when plaintiffs assert claims that “depend upon a common contention . . . capable of classwide resolution—which means that a 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). Here, common questions include whether Defendant failed to provide accurate itemized wage statements. (Motion at 16.) Class members’ claims therefore turn on the same factual and legal questions. Accordingly, Plaintiff has established commonality.

### 3. Typicality

“The purpose of the typicality requirement is to assure that the interest of the named representative aligns with the interests of the class.” Hanon v. Dataproducts Corp., 976 F.2d 497, 508 (9th Cir. 1992). “The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiff, and whether other class members have been injured by the same course of conduct.” Wolin v. Jaguar Land Rover No. Am., 617 F.3d 1168, 1175 (9th Cir. 2010) (quoting Hanon, 976 F.2d at 508). Because typicality is a permissive standard, the claims of the named plaintiff need not be identical to those of the other class members. Hanlon, 150 F.3d at 1020. Here, Plaintiff alleges that he suffered injury from the same actions that allegedly harmed other class members. (Motion at 16.) The Court is satisfied that Plaintiff has met the typicality requirement.

### 4. Adequacy

In determining whether a proposed class representative will adequately protect the interests of the class, the court should ask whether the proposed class representative and his counsel have any conflicts of interest with any class member and whether the proposed class

representative and his counsel will prosecute the action vigorously on behalf of the class. Johnson v. General Mills, Inc., 275 F.R.D. 282, 288 (C.D. Cal. 2011).

Plaintiff contends that no conflict exists between himself and the class because Plaintiff suffered the same alleged injuries as all class members and therefore has an incentive to fairly represent all class members. (Motion at 17.) Additionally, Plaintiff is represented by attorneys who have extensive experience in complex civil litigation. (Id.) The Court concludes both Plaintiff and class counsel will adequately represent the interests of the proposed class.

## **B. Requirements of Rule 23(b)**

“In addition to satisfying Rule 23(a)’s prerequisites, parties seeking class certification must show that the action is maintainable under Rule 23(b)(1), (2), or (3).” Amchem Prod., Inc. v. Windsor, 521 U.S. 591, 614 (1997). Here, Plaintiff asserts the Proposed Settlement satisfies the requirements of Rule 23(b)(3). (Motion at 17.)

Rule 23(b)(3) requires (1) issues common to the whole class to predominate over individual issues and (2) that a class action be a superior method of adjudication for the controversy. See Fed. R. Civ. P. 23(b)(3). As to predominance, the “inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.” Hanlon, 150 F.3d at 1022 (quoting Amchem, 521 U.S. at 623). “[T]he examination must rest on ‘legal or factual questions that qualify each class member’s case as a genuine controversy, questions that preexist any settlement.’” Id. (same). A class should not be certified if the issues of the case require separate adjudication of each individual class member’s claims. Id.

Here, adjudication by representation is warranted because questions common to the settlement class represent a significant aspect of the case and can be resolved for all members of each class in a single adjudication. Specifically, Plaintiff contends that common issues predominate because Defendant allegedly failed to provide both Plaintiff and other class members with accurate itemized wage statements. (Motion at 17.) The Court therefore is satisfied that common questions of fact and law predominate.

A class action must also be superior to other methods of adjudication for resolving the controversy. Fed. R. Civ. P. 23(b)(3). To determine superiority, a court’s inquiry is guided by the following pertinent factors:

- (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)(3)(A)–(D). However, “[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.” Amchem, 521 U.S. at 620.

Here, Plaintiff notes this class action provides an effective mechanism for vindicating the claims of class members because it would not be economical for class members to pursue their claims individually, and the costs of litigation would dwarf any potential recovery. (Motion at 17–18.) Accordingly, the Court concludes the superiority requirement is satisfied.

#### IV. SETTLEMENT AGREEMENT

##### A. Settlement Summary

Below is an overview of the financial terms of the Proposed Settlement:

|                                                 |           |
|-------------------------------------------------|-----------|
| • Gross settlement amount:                      | \$450,000 |
| • Attorneys’ fees:                              | \$150,000 |
| • Costs not to exceed:                          | \$12,500  |
| • LWDA share of PAGA penalties                  | \$50,000  |
| • Total service award for class representative: | \$10,000  |
| • Administration costs estimate:                | \$9,000   |

(Proposed Settlement ¶ 2.) The \$450,000 gross settlement amount is non-reversionary, so no amount will be returned to Defendant. (Motion at 22.) Any checks issued to class members shall remain valid and negotiable for 180 days from the date of issuance. (Proposed Settlement ¶ 18.) Funds from any uncashed checks shall be held by the California State Controller’s Office in the names of the class members whose checks were not cashed. (Motion at 10.) Because all settlement payments are for alleged penalties, there will be no employer or employee payroll taxes associated with the payments. (Proposed Settlement ¶ 71.)

##### B. Financial Terms

###### 1. Payment and Distribution of Funds

Subject to final approval, Defendant will transmit the gross settlement amount to the settlement administrator within ten business days of the settlement effective date. (Id. ¶ 60.) The settlement administrator shall pay each participating class member a pro rata portion of the net settlement amount within twenty business days of the settlement effective date. (Id.) Participating class members shall have 180 calendar days after mailing to cash their checks. (Id. ¶ 63.) The Proposed Settlement does not specify whether class members shall be apprised of this deadline or mailed reminders; the parties shall specify whether this is to occur in the final settlement agreement.

## **2. Class Representatives**

The Proposed Settlement provides for an incentive payment of \$10,000 to Plaintiff for his efforts in prosecuting the action. (Id. ¶ 2.) Plaintiff also agrees to a more general release than class members. (Id. ¶ 77.)

## **3. LWDA Payment**

Subject to Court approval, the Proposed Settlement allocates \$50,000 to penalties under the California Private Attorneys General Act, Cal. Lab. Code §§ 2698, et seq. (Proposed Settlement ¶ 2.) Of this, 75% shall be paid by the Settlement Administrator directly to the California Labor and Workforce Development Agency, while the remaining 25% shall be part of the net settlement amount and distributed to participating class members. (Id.)

## **4. Settlement Administration Costs**

The Parties request that the Court appoint Simpluris, Inc. (“Simpluris”) as the settlement administrator. (Id.) The Proposed Settlement allocates \$9,000 to administer the settlement. (Id.) The Proposed Settlement declines to declare this amount a cap; rather, it identifies \$9,000 as an “estimate,” with the final amount to be less or more. If more, the additional charge will come from the net settlement amount paid to class members. (Id.) While an estimate is suitable for this stage, parties must submit a cap on Simpluris’s fee at the final approval stage.

## **5. Attorneys’ Fees and Costs**

The Proposed Settlement provides that class counsel may apply for attorneys’ fees not to exceed one-third of the gross settlement amount, or \$150,000, and actual litigation costs incurred, up to \$12,500. (Id.)

## **6. Injunctive Relief**

The Proposed Settlement does not appear to include any injunctive relief.

## **7. Release**

In exchange for Defendant’s promise to make the payments provided in the Proposed Settlement, all class members who do not opt out release the following:

all claims, rights, demands, liabilities, causes of action, and theories of liability of every nature and description, whether known or unknown, that were or could have been alleged against any of the Released Parties arising out of, in connection with, or based on the facts alleged in the operative Complaint and/or the PAGA Letter. This includes, but may not be limited to, claims for failure to provide

accurate itemized wage statements, penalties (including but not limited to civil and statutory penalties), damages, interest, costs, or attorneys' fees, and violations of any other local, state, or federal law, whether for economic damages, non-economic damages, penalties, liquidated or punitive damages, restitution, tort, contract, equitable relief, injunctive or declaratory relief, to the extent necessary to effect a full and complete release of the Class Released Claims, including, but not limited to, all claims under any common laws, contract, California Labor Code Sections 96-98.2, et seq., 218.5, 226, and any related provisions, the California Private Attorneys General Act, Labor Code Sections 2698, et seq., California Code of Civ. Proc. Section 1021.5, and/or the California Business & Professions Code Sections 17200, et seq. This release shall extend to all such claims accrued during the Class Period.

(Proposed Settlement ¶ 75.) This release includes a Cal. Civil Code § 1542 waiver. (Id. ¶ 76.)

## 8. Notice and Opt-Out Provision

Simpluris will mail notice packets to class members in English and Spanish within forty-five days of preliminary approval of the settlement. (Id. ¶ 46.) The Proposed Settlement details adequate procedures for Simpluris to follow in case of non-deliverable addresses. (Id.) If class members wish to contest the number of qualifying pay periods assigned by the Settlement Administrator, the Proposed Settlement details how that class member may do so in writing. (Id. ¶ 48.) Class members may opt out in writing within forty-five days after the date that Simpluris mails the notices. (Id. ¶¶ 48, 9.)

## V. PRELIMINARY APPROVAL OF THE SETTLEMENT

"[Rule 23] requires the district court to determine whether a proposed settlement is fundamentally fair, adequate, and reasonable." Hanlon, 150 F.3d at 1026. To determine whether a settlement agreement meets these standards, the court considers a number of factors, including "the strength of the plaintiff's case, the risk, expense, complexity, and likely duration of further litigation, the risk of maintaining class action status throughout 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." Stanton, 327 F.3d at 959 (internal citations omitted). The settlement may not be a product of collusion among the negotiating parties. In re Mego Fin. Corp. Sec. Litig., 213 F.3d 454, 458 (9th Cir. 2000) (citing Class Plaintiffs v. City of Seattle, 955 F.2d 1268, 1290 (9th Cir. 1992)).

"At the preliminary approval stage, some of the factors cannot be fully assessed. Accordingly, a full fairness analysis is unnecessary." Litty v. Merrill Lynch & Co., 2015 WL 4698475, \*8 (C.D. Cal. Apr. 27, 2015). Rather, the court need only decide whether the settlement is potentially fair, Acosta, 243 F.R.D. at 386, in light of the strong judicial policy in favor of settlement of class actions. Class Plaintiffs, 955 F.2d 1276. "[T]he 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.” Hanlon, 15 F.3d at 1027.

#### **A. Extent of Discovery and Stage of the Proceedings**

For a court to approve a proposed settlement, “[t]he parties must . . . have engaged in sufficient investigation of the facts to enable the court to intelligently make an appraisal of the settlement.” Acosta, 243 F.R.D. at 396 (internal quotation marks omitted). Here, Plaintiff explains that class counsel conducted significant discovery prior to the settlement process, including the exchange of initial disclosures; the inspection of over 8,000 wage statements; and an exposure analysis. (Motion at 19-20.) The Court finds that this discovery is sufficient to give each side an idea of the strength of its respective case in a relatively straightforward case such as this one. The extent of discovery therefore weighs in favor of preliminary approval.

#### **B. Amount Offered in Settlement**

In determining whether the amount offered in settlement is fair, a court compares the settlement amount to the parties’ estimates of the maximum amount of damages recoverable in a successful litigation. In re Mego, 213 F.3d at 459.

The gross settlement amount is \$450,000, for approximately 8,260 wage statements. (Id. at 20.) Plaintiff represents that Defendant’s total exposure under Cal. Lab. Code § 226(a) is \$808,100. (Id.) Thus, the settlement is for approximately 55% of the total value of the penalties at issue. Although the settlement amount represents a fraction of the maximum value of this litigation, “[i]t is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair.” In re Mego, 213 F.3d at 459 (quoting Officers for Justice v. Civil Serv. Comm’n, 688 F.2d 615, 628 (9th Cir. 1982)). In In re Mego, the Ninth Circuit considered the difficulties in proving the case and determined the settlement amount, which was one-sixth of the potential recovery, was fair and adequate. Id. Given the difficulties posed to each individual of pursuing his or her claim, the Court finds the settlement amount is potentially fair.

#### **C. Strength of Case and Risk, Expense, Complexity, and Likely Duration of Litigation**

While the legal question at issue is not overly complex, the Court believes the risk, expense, and likely duration of further litigation weigh in favor of preliminary approval. Without settlement, the parties would be required to litigate class certification, the ultimate merits of the case, and any appeal—a process which the Court acknowledges is long and expensive. Overall, these factors weigh in favor of preliminary approval.

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**D. Experience and Views of Counsel**

“Great weight is accorded to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation.” Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc., 221 F.R.D. 523, 528 (C.D. Cal. 2004) (internal citation and quotation marks omitted). Here, the parties reached settlement after review of their claims and defenses, and Plaintiff’s counsel recommends approval of the Proposed Settlement. (Motion at 19.) The Court finds this factor weighs in favor of preliminary approval.

**E. Collusion Between the Parties**

“To determine whether there has been any collusion between the parties, courts must evaluate whether ‘fees and relief provisions clearly suggest the possibility that class interests gave way to self interests,’ thereby raising the possibility that the settlement agreement is the result of overt misconduct by the negotiators or improper incentives for certain class members at the expense of others.” Litty, 2015 WL 4698475, at \*10 (quoting Staton, 327 F.3d at 961).

The parties negotiated settlement at arms-length in a mediation session with an experienced and respected mediator. (Motion at 14.) The use of a mediator experienced in the settlement process tends to establish that the settlement process was not collusive. See, e.g., Satchell v. Fed Ex. Corp., 2007 WL 1114010, at \*4 (N.D. Cal. Apr. 13, 2007).

**F. Incentive Award**

A court may grant a modest incentive award to class representatives, both as an inducement to participate in the suit and as compensation for the time spent in litigation activities. See In re Mego, 213 F.3d at 463 (finding the district court did not abuse its discretion in awarding an incentive award to the class representatives). Plaintiff requests an incentive fee award of \$10,000 for his service, involvement, and risk in connection with being a class representative and for a more general release of claims. (Proposed Settlement ¶ 2.) The incentive payment is in addition to the individual payment allocated to Plaintiff under the Proposed Settlement. (Id.)

Plaintiff explains that he has met and conferred with class counsel and provided class counsel with documents and information. The Court is satisfied that Plaintiff has participated in class settlement. However, named plaintiff awards are usually lower than \$10,000. See, e.g., Clesceri v. Beach City Investigations & Protective Servs., Inc., 2011 WL 320998, at \*2, 9, 12 (C.D. Cal. Jan. 27, 2011) (incentive award of \$3,000); Vanwagoner v. Siemens Indus., Inc., 2014 WL 1922731, at \*2 (E.D. Cal. May 14, 2014) (incentive award of \$5,000). The Court therefore invites Plaintiff to point to examples of similar named plaintiff awards in similar cases before it grants final approval.

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## G. Attorneys' Fees

Generally, courts in the Ninth Circuit find that a benchmark of 25% of the common fund is a reasonable fee award. Hanlon, 150 F.3d at 1029 (“This circuit has established 25% of the common fund as a benchmark award for attorney fees.”); Paul, Johnson, Alston & Hunt v. Graulty, 866 F.3d 258, 272 (9th Cir. 1989) (the 25% benchmark can be adjusted in either direction “to account for any unusual circumstances[,]” but the justification for adjustment must be apparent); Monterrubio v. Best Buy Stores, L.P., 291 F.R.D. 443, 455 (E.D. Cal. 2013) (citing Six (6) Mexican Workers v. Arizona Citrus Growers, 904 F.2d 1301, 1311 (9th Cir. 1990)) (“In applying this method, courts typically set a benchmark of 25% of the fund as a reasonable fee award, and justify any increase or decrease from this amount based on circumstances in the record.”).

The Court, in its discretion, may award attorneys' fees in a class action by applying either the lodestar method or the percentage-of-the-fund method. Fischel v. Equitable Life Assurance Soc'y of U.S., 307 F.3d 997, 1006 (9th Cir. 2002). The Court determines the lodestar amount by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate. McGrath v. Cnty. of Nev., 67 F.3d 248, 252 (9th Cir. 1995). The hourly rates used to calculate the lodestar must be “in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation.” Blum v. Stenson, 465 U.S. 886, 895 n.11 (1984). Next, the Court must decide whether to adjust the ‘presumptively reasonable’ lodestar figure based upon the factors listed in Kerr v. Screen Extras Guild, Inc., 526 F.2d 67, 69–70 (9th Cir. 1975), abrogated on other grounds by City of Burlington v. Dague, 505 U.S. 557 (1992), that have not been subsumed in the lodestar calculation. See Caudle v. Bristow Optical Co., Inc., 224 F.3d 1014, 1028–29 (9th Cir. 2000).<sup>2</sup>

Here, Plaintiff's counsel plans to petition for attorneys' fees not to exceed one-third of the gross settlement amount. (Proposed Settlement ¶ 69.) Plaintiff does not offer a lodestar crosscheck or any record of hours billed. Plaintiff does not offer any reason for why the proposed attorneys' fees differs from the Ninth Circuit's 25% standard. The Court adopts the proposed attorneys' fee for the purposes of preliminary settlement approval but will not grant final approval absent the missing information.

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<sup>2</sup> In Kerr, the Ninth Circuit adopted the 12-factor test articulated in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974) which identified the following factors for determining reasonable fees: (1) the time and labor required, (2) the novelty and difficulty of the questions involved, (3) the skill requisite to perform the legal service properly, (4) the preclusion of other employment by the attorney due to acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or the circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation, and ability of the attorneys, (10) the “undesirability” of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases. Kerr, 526 F.2d at 70.

## H. Remaining Factors

In addition to the factors discussed above, the Court may consider the risk of maintaining class action status throughout the trial, the presence of a governmental participant, and the reaction of the class members to the proposed settlement. Staton, 327 F.3d at 959 (internal citations omitted). At this stage, the Court cannot fully analyze the remaining factors. For example, there is no governmental participant in this action. Additionally, the settlement class members have yet to receive notice of the Proposed Settlement and have not had an opportunity to comment or object to its terms. The Court directs Plaintiff, in the motion for final approval, to provide briefing on these issues if applicable.

On balance the factors support preliminary approval of the Proposed Settlement. The Proposed Settlement is potentially fair, adequate, and reasonable.

## VI. CONCLUSION

For the foregoing reasons, the Court GRANTS Plaintiff's Motion for Preliminary Approval. The Court ORDERS as follows:

1. The Proposed Settlement is preliminarily approved as potentially fair, reasonable, and adequate. However, in his motion for final approval, Plaintiff shall address each of the concerns raised above.

2. The following settlement class is certified for settlement purposes only:

All current and former non-exempt employees of Defendant in the State of California who were paid "Premium" and/or "ONCALPAY" wages at any time between April 6, 2019 through the date of the approval of the Proposed Settlement.

3. The Court appoints Larry W. Lee, Kristen M. Agnew, Nicholas Rosenthal, and William Lucas Marder, of the Diversity Law Group PC, to serve as counsel on behalf of the Settlement Class for purposes of settlement only.
4. Plaintiff Richard Tobin is appointed as the representative of the Settlement Class for purposes of settlement only.
5. The Court appoints Simpluris, Inc. as the settlement administrator.
6. The Class Notice form is approved.
7. The Court authorizes distribution of Class Notice to the Settlement Class members and pursuant to the Proposed Settlement.

8. The hearing date for the Final Fairness Hearing is hereby set for **Monday, July 26, 2021** at 9:00 a.m. in Courtroom 1 of the United States District Court for the Central District of California, Eastern Division located at 3470 12th Street, Riverside, California 92501.

**IT IS SO ORDERED.**