

To: Superior Court of Alameda County Page 2 of 108 2020-07-09 19:48:11 (GMT)

16463653403 From: Bonnie Schwab

FILED BY FAX

ALAMEDA COUNTY

July 09, 2020

CLERK OF
THE SUPERIOR COURT
By Shabra Iyamu, Deputy

CASE NUMBER:

RG20064474

Jahan C. Sagafi (SBN 224887)
Molly J. Frandsen (SBN 320094)
OUTTEN & GOLDEN LLP
One California Street, Suite 1250
San Francisco, CA 94111
Telephone: (415) 638-8800
Facsimile: (415) 638-8810
E-Mail: jsagafi@outtengolden.com
E-Mail: mfrandsen@outtengolden.com

Melissa L. Stewart*
OUTTEN & GOLDEN LLP
685 Third Avenue, 25th Floor
New York, NY 10017
Telephone: (212) 245-1000
Facsimile: (646) 509-2060
E-mail: mstewart@outtengolden.com

* *pro hac vice* motion pending

*Attorneys for Plaintiffs, Proposed
Class and Collective Members, and Aggrieved Employees*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA**

MICHELE MARKS and SHAMAR IRACE,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

EVERLAW, INC.,
Defendant.

Case No.: RG20064474

**PLAINTIFFS' NOTICE OF MOTION
AND UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND COLLECTIVE ACTION
SETTLEMENT; MEMORANDUM OF
POINTS & AUTHORITIES IN SUPPORT
THEREOF.**

Judge: Hon. Brad Seligman
Dept: 23
Date: July 31, 2020
Time: 9:30 a.m.
Reservation No.: R-2185737
Date Action Filed: June 11, 2020

CASE NO.: RG20064474

PLAINTIFFS' NOTICE OF MOTION AND
UNOPPOSED MOTION FOR PRELIMINARY APPROVAL

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:
2 PLEASE TAKE NOTICE that on July 31, 2020 at 9:00 a.m. or as soon thereafter as the matter
3 may be heard, in Department 23 of this Court, or such other Department to which Judge
4 Seligman may be reassigned, located at 1221 Oak Street, Oakland, CA 94612, California,
5 Plaintiffs Michele Marks and Shamar Irace (“Plaintiffs”), on behalf of themselves and all
6 others similarly situated (“Class Members”), will and hereby do, move this Court for an order
7 provisionally certifying the proposed settlement class (“Settlement Class”) and granting
8 preliminary approval of the Settlement Agreement.¹

9 This unopposed motion is based upon this Notice of Motion and Motion; the
10 accompanying Memorandum of Points and Authorities; the Declaration of Jahan C. Sagafi
11 filed herewith; all exhibits attached thereto, including the executed action settlement
12 agreement; the pleadings, papers, and other records on file in this action; and oral argument on
13 the motion.

14
15
16
17
18
19
20
21
22
23
24
25
26
27 ¹ All capitalized terms have the meaning set forth in the Settlement Agreement unless
28 indicated otherwise.

TABLE OF CONTENTS

I. INTRODUCTION	1
II. FACTUAL AND PROCEDURAL BACKGROUND	1
III. TERMS OF THE PROPOSED SETTLEMENT	3
A. Eligible Employees	3
B. Settlement Amount	3
C. Release of Claims	4
D. Distribution to Class Members	4
E. Tax Characterization	5
F. Notice and Settlement Administrator	6
G. Attorneys' Fees; Service Awards; and Settlement Administration Costs	7
IV. ARGUMENT	7
A. Certification of the Settlement Class is Appropriate	7
1. The Settlement Class Is Ascertainable.	7
2. The Settlement Class Is Sufficiently Numerous.....	8
3. Common Questions of Law and Fact Predominate.....	8
4. The Typicality Requirement Is Met.	8
5. The Adequacy Requirement Is Met.....	9
6. A Class Action Is Superior to Other Available Methods.	9
B. Conditional Certification of the Settlement Collective Is Appropriate.....	9
C. The Settlement Meets the Requirements for Preliminary Approval.	10
1. The Settlement is the Product of Arm's Length Negotiations by Experienced Counsel After Sufficient Information Exchange.....	11
2. The Settlement Provides Substantial Relief for Class Members.....	12
a. Recovery for Unpaid Overtime, Penalties, and Related Damages	13
b. Recovery for PAGA Penalties.....	15

1	3. Plaintiffs Faced Significant Risks in the Absence of Settlement	16
2	D. The Proposed Notice and Settlement Procedure Are Appropriate.....	17
3	E. A Final Approval Hearing Should be Scheduled.	19
4	V. CONCLUSION	19

TABLE OF AUTHORITIES

Cases	Page (s)
<i>Amaral v. Cintas Corp. No. 2</i> , 163 Cal. App. 4th 1157 (2008).....	17
<i>Brinker Rest. Corp. v. Super. Ct.</i> , 53 Cal. 4th 1004 (2012).....	7, 8
<i>Bufile v. Dollar Fin. Grp., Inc.</i> , 162 Cal. App. 4th 1193 (2008).....	9
<i>by Noel v. Thrifty Payless, Inc.</i> , 445 P.3d 626 (2019)	7, 9
<i>Campbell v. City of Los Angeles</i> , 903 F.3d 1090 (9th Cir. 2018).....	9, 10
<i>Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794 (1996).....	11
<i>Eisen v. Carlisle & Jacquelin</i> , 391 F.2d 555, 560 (2d Cir. 1968).....	9
<i>Ferguson v. Lieff, Cabraser, Heimann & Bernstein</i> , 30 Cal. 4th 1037 (2003).....	10, 16
<i>Fireside Bank v. Super. Ct.</i> , 40 Cal. 4th 1069, 1089 (2006).....	7
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9th Cir. 1998).....	8
<i>Hernandez v. Dutton Ranch Corp.</i> , No. 19 Civ. 817, 2020 WL 1274908 (N.D. Cal. Mar. 17, 2020)	9
<i>Hernandez v. Towne Park, Ltd.</i> , 2012 WL 2373372, No. 12 Civ. 02972 (C.D. Cal. June 22, 2012).....	14
<i>Karl v. Zimmer Biomet Holdings, Inc.</i> , No. 18 Civ. 4176, 2019 WL 2775567 (N.D. Cal. July 2, 2019)	10
<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal. App. 4th 116 (2008).....	10, 11, 12
<i>McGhee v. Bank of Am.</i> , 60 Cal. App. 3d 442 (1976).....	9
<i>McLeod v. Bank of Am., N.A.</i> , No. 16 Civ. 03294, 2018 WL 5982863 (N.D. Cal. Nov. 14, 2018)	15

1	<i>In re Mego Fin. Corp. Sec. Litig.</i> , 213 F.3d 454 (9th Cir. 2000).....	15
2	<i>Mullane v. Cent. Hanover Bank & Trust Co.</i> ,	
3	339 U.S. 306 (1950)	17
4	<i>Palacios v. Penny Newman Grain, Inc.</i> ,	
5	No. 14 Civ. 01804, 2015 WL 4078135 (E.D. Cal. July 6, 2015).....	10
6	<i>Richmond v. Dart Indus., Inc.</i> ,	
7	29 Cal. 3d 462 (1981).....	9
8	<i>Rose v. City of Hayward</i>	
9	126 Cal. App. 3d 926 (1981).....	7, 8
10	<i>Ruch v. AM Retail Grp., Inc.</i> ,	
11	No. 14 Civ. 05352, 2016 WL 5462451 (N.D. Cal. Sept. 28, 2016).....	15
12	<i>Seastrom v. Neways, Inc.</i> ,	
13	149 Cal. App. 4th 1496 (2007).....	8
14	<i>Slavkov v. Fast Water Heater Partners I, LP</i> ,	
15	Case No. 14 Civ. 04324, 2017 WL 3834873 (N.D. Cal. July 25, 2017).....	15
16	<i>United Parcel Serv. v. Superior Court</i> ,	
17	196 Cal. App. 4th 57, 60 (2011).....	14
18	<i>Van Kempen v. Matheson Tri-Gas, Inc.</i> ,	
19	No. 15 Civ. 00660, 2017 WL 3670787 (N.D. Cal. Aug. 25, 2017)	15
20	<i>Vasquez v. Super. Ct.</i> ,	
21	4 Cal. 3d 800 (1971).....	10
22	<i>Villegas v. J.P. Morgan Chase & Co.</i> ,	
23	No. 09 Civ. 00261, 2012 WL 5878390 (N.D. Cal. Nov. 21, 2012)	15
24	<i>Wershba v. Apple Comput., Inc.</i> ,	
25	91 Cal. App. 4th 224 (2001).....	17
26	Statutes	
27	29 U.S.C. § 260	13
28	29 U.S.C. § 216(b).....	9
	Cal. Lab. Code § 2699	<i>passim</i>
	Code Civ. Proc. § 382	7, 8

Other Authorities

Cal. Rules of Court, rule 3.769(c)-(g)10

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs seek preliminary approval of a class action settlement on behalf of
4 approximately 46 Sales Representatives employed by Defendant Everlaw, Inc. (“Defendant” or
5 “Everlaw”). This Settlement provides a non-reversionary fund of \$925,000 for Class
6 Members’ benefit (inclusive of payment of Class Member settlement awards, settlement
7 administration costs, attorneys’ fees and costs, and service awards). In addition, Everlaw will
8 pay the employer’s portion of payroll taxes (separately from the Total Settlement Amount).

9 The Settlement provides significant monetary relief to the Settlement Class—the
10 average net settlement award per Class Member is approximately \$11,825—and the proposed
11 Settlement satisfies all the criteria for preliminary approval.

12 Accordingly, Plaintiffs respectfully request that the Court: (1) grant preliminary
13 approval of the Settlement Agreement, attached as **Exhibit 1** to the Declaration of Jahan C.
14 Sagafi (“Sagafi Decl.”);² (2) preliminarily certify the Settlement Class and conditionally certify
15 the Settlement Collective for settlement purposes; (3) approve the form, content, and method of
16 distribution of the Class Notice (“Notice”); (4) appoint Rust Consulting, Inc. as the Settlement
17 Administrator; (5) appoint Outten & Golden LLP as Class Counsel; (6) appoint Plaintiffs as
18 class representatives (“Settlement Class Representatives”); and (7) schedule a hearing to
19 consider final approval of the Settlement.

20 **II. FACTUAL AND PROCEDURAL BACKGROUND**

21 Everlaw is a software as a service (“SaaS”) company located in Oakland, California that
22 sells an e-discovery platform to law firms and other clients. Compl. ¶¶ 2-3. Plaintiffs and
23 Class Members worked for Everlaw in California as salespeople, in the job titles of Account
24 Executive I and II, Senior Account Executive, and Sales Development Representative I and II
25 (collectively, “Sales Representatives”). *Id.* ¶ 1.

26
27
28 ² All exhibits referenced are Exhibits to the Sagafi Declaration unless indicated otherwise.

1 On July 31, 2019, Plaintiffs approached Everlaw to informally resolve claims that
2 Everlaw had misclassified them and other Sales Representatives as exempt from overtime
3 under California law and violated various related state law provisions and the Fair Labor
4 Standards Act (“FLSA”). Sagafi Decl. ¶ 24. Plaintiffs invited Everlaw to engage in pre-
5 litigation settlement discussions.³ *Id.* On September 12, 2019, Plaintiffs and Everlaw (“the
6 Parties”) agreed to engage in a dialogue regarding the possibility of a resolution of Plaintiffs’
7 allegations and entered into an agreement that tolled the statutes of limitations applicable to
8 Sales Representatives’ claims. *Id.* ¶ 26. The Parties then began extended settlement
9 discussions. *Id.* ¶ 27.

10 In connection with settlement negotiations, the Parties engaged in significant informal
11 discovery to allow the Parties to value the claims and evaluate litigation risks. Everlaw
12 produced Plaintiffs’ personnel files, Sales Representatives’ job descriptions, company
13 compensation plans, and other policies, as well as personnel data for each Sales Representative
14 it had employed during the Class Period, including dates of employment and annual
15 compensation (base salary and commission payments). *Id.* ¶ 28.

16 On February 18, 2020, the Parties participated in a full-day mediation before Tripper
17 Ortman, Esq., an experienced and respected mediator in wage and hour class action litigation.
18 *Id.* ¶¶ 30-31. Thereafter, the Parties engaged in extensive additional settlement discussions,
19 resulting in a Memorandum of Understanding executed on April 14, 2020 and a final
20 Settlement Agreement executed on June 9, 2020. *Id.* ¶ 32. The Parties re-executed on July 7,
21 2020, after agreeing to make minor, non-substantive changes to the Settlement Agreement. *Id.*

22 On June 11, 2020, Plaintiffs filed the Complaint. Everlaw answered on June 25, 2020.
23

24 ³ Before approaching Everlaw, Plaintiffs’ Counsel conducted a thorough investigation which
25 included factual and legal research into the underlying merits of Plaintiffs’ claims, possible
26 defenses, the proper measure of damages, and the likelihood of class and collective certification.
27 Sagafi Decl. ¶ 25. Plaintiffs’ Counsel conducted in-depth interviews with Plaintiffs that helped
28 Plaintiffs’ Counsel determine the hours that Sales Representatives worked, the nature of their
duties, and reviewed Everlaw’s policies as they relate to Sales Representatives as well as other
employment documents, including pay statements and job descriptions. *Id.*

III. TERMS OF THE PROPOSED SETTLEMENT

A. Eligible Employees

Class Members are approximately 46 individuals employed by Everlaw as Sales Representatives in California at any time between September 12, 2015 and the Release Date.⁴ Ex. 1 (Settlement Agreement) §§ 1.3, 1.6. All 46 Class Members are also Putative Collective Members, employed by Everlaw as Sales Representatives during the period September 12, 2016 through the Release Date. *Id.* § 1.28.

B. Settlement Amount

The Settlement Agreement creates a non-reversionary Total Settlement Amount of \$925,000. *Id.* § 1.38.⁵ The Total Settlement Amount covers: (1) Class Members' settlement awards for no more than 2,212.1 Sales Representative workweeks; 2); Service Awards of up to \$10,000 each to Plaintiffs; (3) Plaintiffs' Counsel's attorneys' fees of up to one-third of the Total Settlement Amount; (4) the reimbursement of Plaintiffs' Counsels' actual out-of-pocket costs not to exceed \$20,000; (5) the Settlement Administrator's fees and costs not to exceed \$11,500; and (6) a Private Attorneys General Act Fund ("PAGA Fund") of \$18,500 (allocated 25% to PAGA Members and 75% to the California Labor and Workforce Development Agency ("LWDA")). *Id.* §§ 1.17, 1.23, 1.37, 10.1(A), 10.2(A), 10.3(A). The Total Settlement Amount does not include the employer's portion of payroll taxes, which will be paid separately by Everlaw. *Id.* § 1.38, 10.1(A).

⁴ "Release Date" is the date corresponding to the number of accrued workweeks covered by the Total Settlement Amount. The Parties agree that if the number of workweeks identified in advance of the Parties' mediation (2,011) increase by more than 10% (up to 2,212.1), Everlaw will have the option to increase the Total Settlement Amount by a proportionate additional amount for each additional workweek up to the date of preliminary approval, and the Release Date will be adjusted accordingly. If Everlaw declines to exercise this option, the Release Date will correspond with the date on which the 2,212.1 workweeks accrue. *Id.* § 1.30. Accordingly, the precise Release Date will be set after preliminary approval, before Notice issues to the Settlement Class.

⁵ The Total Settlement Amount may increase before final approval if the number of workweeks identified at the mediation (2,011) increase by more than 10% and Everlaw exercises its option to pay a proportionate additional amount for each additional workweek, in exchange for adjusting the Release Date accordingly, as described *supra* n.4. *Id.* §§ 1.30, 1.38.

1 **C. Release of Claims**

2 Class Members who do not opt out (“Participating Class Members”) will receive a
3 Settlement Check without having to submit a claim form or take any action. *Id.* §§ 1.6, 1.25.
4 Participating Class Members will release all “Released California Claims.”⁶ *Id.* § 11.1(A).

5 Participating Class Members who cash a Settlement Check will also release the “Released
6 Collective Claims.”⁷ *Id.* § 11.1(B). Participating Class Members who do not cash the
7 Settlement Check will not release the Released Collective Claims. *Id.*

8 Additionally, PAGA Members will release all “Released PAGA Claims.”⁸

9 The proposed Notice describes the Released Class, Collective, and PAGA Claims, and the
10 Settlement Checks will include an acknowledgement of the release of the Released Collective
11 Claims. *Id.* § 11.1(B); Ex. A (Notice) ¶ 10.

12 **D. Distribution to Class Members**

13 Class Members do not need to take any action to participate in the Settlement and will
14 automatically receive a Settlement Check if they do not opt out. Ex. 1 (Settlement Agreement)
15 § 1.25; Ex. A (Notice) ¶ 8. Participating Class Members will receive a Settlement Check for
16 their proportionate share of the Net Fund (defined as the amount remaining after all fees, costs,
17

18 ⁶ “Released Class Claims” means any and all California wage and hour claims that accrued
19 during the Class Member’s employment as an exempt-classified Sales Representative, relating
20 back to September 12, 2015, including the claims that were alleged in Plaintiffs’ Complaint, and
21 continuing through the Release Date, including, without limitations, all state claims for unpaid
22 wages, premium pay of any kind, and all claims for penalties under California Labor Code
sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1194, 2698 *et seq.*, as well as the
applicable California Industrial Welfare Commission Wage Order, Business and Professions
Code sections 17200-17208 *et seq.*, interest, liquidated damages, attorneys’ fees, costs, and
expenses as alleged in the Complaint. *Id.* § 1.31.

23 ⁷ “Released Collective Claims” means any and all wage and hour claims that accrued during
24 the Collective Member’s employment as an exempt-classified Sales Representative, relating
25 back to September 12, 2016, including the claims that were alleged in Plaintiffs’ Complaint, and
continuing through the Release Date, including, without limitation, any and all federal claims for
unpaid overtime wages pursuant to the FLSA, and related claims for penalties, interest,
liquidated damages, attorneys’ fees, costs, and expenses. *Id.* § 1.32.

26 ⁸ “Released PAGA Claims” means any and all claims relating to penalties under the California
27 Private Attorneys General Act, California Labor Code section 2698 *et seq.*, that accrued during
28 the PAGA Member’s employment as an exempt-classified Sales Representative, relating back to
September 12, 2018, and continuing through the Release Date. *Id.* § 1.33.

awards, and the PAGA Fund is deducted) based on the number of calendar weeks between September 12, 2015 and the Release Date during which the Class Member was employed by Everlaw as an exempt-classified Sales Representative. *Id.* §§ 1.11, 1.17, 10.5(A). PAGA Members will be entitled to an additional PAGA Amount based on weeks worked in the PAGA period. *Id.* §§ 10.5(A)(2)(d), 10.5(B).

None of the Total Settlement Amount will revert to Everlaw. If there are uncashed checks after the 180-day check-cashing deadline expires, the Settlement Administrator will redistribute the remaining funds to Participating Class and Collective Members who cashed their checks unless a redistribution would be infeasible. *Id.* §10.1(C). In that case, any remaining amounts will be donated to Centro Legal de la Raza (“Centro Legal”) as a *cy pres* recipient pursuant to section 384(b) of the California Code of Civil Procedure. *Id.* Any PAGA payment check not cashed shall revert to the California unclaimed property fund under the name of the PAGA Member. *Id.*

Centro Legal is a proper *cy pres* beneficiary because it provides legal services to low-income communities and workers, including services related to their employment rights, which is work which is closely aligned with the claims at issue in this case. Sagafi Decl. ¶ 33. Plaintiffs’ Counsel do not have any current interest in or any affiliation with Centro Legal. *Id.* ¶ 34.

E. Tax Characterization

One-third of the individual settlement payments to Participating Class Members will be treated as wages⁹ subject to normal tax withholdings and reported to taxing authorities on an IRS Form W-2. Ex. 1 § 10.6(A)-(B). The remaining portion of each Participating Class Member’s individual settlement Payment will be treated as liquidated damages, statutory penalties, and interest, and will not be subject to tax withholding; an IRS Form 1099 shall be issued for this portion. *Id.* Participating Class Members will be responsible for the employee

⁹ The Parties agreed to treat one-third as wages because wages amount to approximately one-third of Class Members’ maximum theoretical recovery, as detailed in section IV(C)(2)(a) below.

1 portion of taxes associated with these payments, and Everlaw will be responsible to fund the
2 employer's portion of payroll taxes separately from the Total Settlement Amount. *Id.* §§
3 10.1(A), 10.6(C).

4 **F. Notice and Settlement Administrator**

5 The Parties have selected Rust Consulting ("Rust") as the settlement claims
6 administrator ("Settlement Administrator"). *Id.* § 3(A). Rust has agreed to administer the
7 settlement for an amount not to exceed \$11,500, which includes all service fees, costs, and
8 expenses. *Id.* § 3(B); Ex. 2 (Declaration of Eric Bishop ("Bishop Decl.")) ¶ 16. A declaration
9 from Rust regarding its qualifications to perform the duties of Settlement Administrator and its
10 estimate of the administration costs is submitted herewith. *See* Ex. 2.

11 Within 21 days of the Preliminary Approval Date, Notice will be sent to Class Members
12 via First Class U.S. Mail and e-Mail. Ex. 1 (Settlement Agreement) § 5(B). In the event that a
13 Notice mailed to a Class Member is returned as undeliverable, the Settlement Administrator
14 shall take all reasonable steps to obtain the correct address, including up to two skip traces, and
15 will attempt a re-mailing to any Class Member for whom it obtains a more recent address. *Id.* §
16 5(C).

17 The Notice will describe: 1) the nature of the litigation; 2) a summary of the settlement
18 terms; 3) the estimated amount of each Class Member's Settlement Check; 4) the opportunity to
19 dispute the number of workweeks used in the calculation; and 5) the opportunity to participate
20 by cashing a Settlement Check or to object, opt-out, or appear at the Fairness Hearing. *Id.* §
21 5(B). The Settlement Administrator will establish a website that will include all settlement-
22 related orders and documents submitted to the Court. *Id.* § 3(C).

23 Class Members will have 60 days from issuance of the Notice to opt out, file objections,
24 or challenge workweek data. *Id.* §§ 5(D); 10.5(C). Class Members to whom Notice is re-
25 mailed may object or opt-out by the later of the Objection/Opt Out Deadline or 45 days from the
26 stamped date of re-mailing. *Id.* § 5(D).

The Settlement Administrator will send reminders via e-mail and First Class U.S. Mail within 60 days after the initial distribution of checks to Participating Class Members who have not yet cashed their Settlement Checks. *Id.* § 10.1(C).

G. Attorneys’ Fees; Service Awards; and Settlement Administration Costs

Subject to Court approval, Plaintiffs’ Counsel will apply for up to 33 1/3% of the Total Settlement Amount as attorneys’ fees (or \$308,333.33), and actual litigation costs not to exceed \$20,000. *Id.* § 10.2(A). Plaintiffs will also request Court approval for the payment of Service Awards of \$10,000 each and the payment of the fees, costs, and expenses of the Settlement Administrator, not to exceed \$11,500. *Id.* §§ 3(B); 10.3(A).

IV. ARGUMENT

A. Certification of the Settlement Class Is Appropriate.

The Court should provisionally certify the Settlement Class for purposes of settlement because it is ascertainable and sufficiently numerous, there exists a well-defined community of interest, and a class is superior to alternative proceedings. *See Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1021 (2012); *see also* Code Civ. Proc. § 382. A well-defined community of interest exists when there are “(1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.” *Brinker Rest. Corp.*, 53 Cal. 4th at 1021 (quoting *Fireside Bank v. Super. Ct.*, 40 Cal. 4th 1069, 1089 (2006)).

1. The Settlement Class Is Ascertainable.

A class is ascertainable when its members may be identified by reference to official records. *Rose v. City of Hayward* 126 Cal. App. 3d 926, 934 (1981), *disapproved of on another grounds by Noel v. Thrifty Payless, Inc.*, 445 P.3d 626 (2019). Here, the Settlement Class is ascertainable because Class Members are current and former employees of Everlaw, whose identities can be identified from its employment records. Sagafi Decl. ¶ 35.

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

The numerosity requirement is satisfied because the Settlement Class is of such a size that is “it is impracticable to bring them all before the court.” Code Civ. Proc. § 382. Here, the Settlement Class meets this requirement because it is estimated to include 46 members. Sagafi Decl. ¶ 36; *see also Rose*, 126 Cal. App. 3d at 934 (finding numerosity requirement satisfied with class of 42).

3. Common Questions of Law and Fact Predominate.

Common questions predominate where the legal theory is “likely to prove amenable to class treatment,” such that the resolution of claims “in a single class proceeding would be both desirable and feasible.” *Brinker*, 53 Cal. 4th at 1021-22 (quoting *Sav-On Drug Stores, Inc. v. Super. Ct.*, 34 Cal. 4th 319, 327 (2004)). The test for determining predominance of common issues is whether the proposed class is sufficiently cohesive to warrant adjudication on a classwide basis. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1022 (9th Cir. 1998).

Here, common issues predominate because Plaintiffs have alleged a single policy of classifying all Sales Representatives as exempt from overtime protections, and the other claims—meal and rest breaks, wage statements, and timely pay claims—are largely derivative of the misclassification question. Common legal and factual questions about Everlaw’s pay practices accordingly predominate over individual questions.

4. The Typicality Requirement Is Met.

Where plaintiffs' injuries are of the same nature as those of other class members and arise from the same general course of conduct, the typicality requirement is satisfied. *See, e.g., Seastrom v. Neways, Inc.*, 149 Cal. App. 4th 1496, 1502 (2007). Here, Plaintiffs' claims are typical of the Settlement Class's claims because they worked as Sales Representatives in California and were subject to the same policy of exempt classification and related violations. Plaintiffs' claims, therefore, arise from the same set of facts and legal theories and the typicality requirement is satisfied.

1 **5. The Adequacy Requirement Is Met.**

2 The adequacy requirement is met if the named plaintiffs and their counsel have no
3 interests adverse to the proposed class and are committed to vigorously prosecuting the case on
4 behalf of the class. *McGhee v. Bank of Am.*, 60 Cal. App. 3d 442, 450-51 (1976). Here,
5 Plaintiffs are adequate representatives because they have no known conflicts of interest with
6 the Settlement Class, and their claims are consistent with the claims of other Class Members.
7 Sagafi Decl. ¶ 37. Plaintiffs' Counsel are adequate because they are skilled and experienced in
8 employment class action litigation and have prosecuted the case vigorously on behalf of the
9 Settlement Class. *Id.* ¶ 38.

10 **6. A Class Action Is Superior to Other Available Methods.**

11 Class treatment is superior to individual adjudication of class members' claims when it
12 would prevent repetitious litigation and provide "a method of obtaining redress for claims
13 which would otherwise be too small to warrant individual litigation." *Richmond v. Dart Indus.,*
14 *Inc.*, 29 Cal. 3d 462, 469 (1981) (quoting *Eisen v. Carlisle & Jacquelin*, 391 F.2d 555, 560 (2d
15 Cir. 1968)). Here, although each Class Member's claim is relatively small, each would
16 consume substantial judicial resources if litigated individually to trial. It would therefore be
17 inefficient to resolve these claims in separate trials. *See Bufile v. Dollar Fin. Grp., Inc.*, 162
18 Cal. App. 4th 1193, 1208 (2008), *disapproved of on another grounds by Noel*, 445 P.3d 626.
19 Because the class mechanism will achieve economies of scale, conserve judicial resources, and
20 avoid repetitive proceedings, superiority is met.

21 **B. Conditional Certification of the Settlement Collective Is Appropriate.**

22 Employees alleging violation of their rights under the FLSA may bring a claim seeking
23 relief on their own behalf and on behalf of "other employees similarly situated." 29 U.S.C. §
24 216(b). At the conditional certification stage, courts determine whether the proposed collective
25 should be given notice. *Campbell v. City of Los Angeles*, 903 F.3d 1090, 1109 (9th Cir. 2018).
26 This stage is lenient; loosely akin to a plausibility standard. *Hernandez v. Dutton Ranch Corp.*,
27 No. 19 Civ. 817, 2020 WL 1274908, at *1 (N.D. Cal. Mar. 17, 2020) (quoting *Campbell*, 903
28

1 F.3d at 1109). Plaintiffs are similarly situated when they share “a similar issue of law or fact
2 material to the disposition of their FLSA claims.” *Campbell*, 903 F.3d at 1117.

3 Here, Plaintiffs have demonstrated that conditional certification is appropriate by
4 identifying a common policy that classifies them as exempt from overtime under the FLSA.
5 *See Karl v. Zimmer Biomet Holdings, Inc.*, No. 18 Civ. 4176, 2019 WL 2775567, at *2 (N.D.
6 Cal. July 2, 2019) (sales representatives similarly situated where they alleged they were victims
7 of a common misclassification policy).

8 **C. The Settlement Meets the Requirements for Preliminary Approval.**

9 Settlement of class actions is favored by public policy. *See Ferguson v. Lieff, Cabraser,*
10 *Heimann & Bernstein*, 30 Cal. 4th 1037, 1054 (2003) (“Settlement of class actions is
11 encouraged . . . because they consume substantial judicial resources and present unusually
12 large risks for the litigants.”) (citation and quotation marks omitted). A class settlement is
13 reviewed and approved by a court in two steps: (1) an early (preliminary) review, and (2) a
14 final review at a fairness hearing after notice has been distributed to the class members. Cal.
15 Rules of Court, rule 3.769(c)-(g). At the preliminary approval stage, the court “need only
16 determine whether the proposed settlement is within the range of possible approval such that
17 there is a reason to notify the class members of the proposed settlement and to proceed with a
18 fairness hearing.” *Palacios v. Penny Newman Grain, Inc.*, No. 14 Civ. 01804, 2015 WL
19 4078135, at *7 (E.D. Cal. July 6, 2015) (citation and quotation marks omitted).¹⁰

20 “The well-recognized factors that the trial court should consider in evaluating the
21 reasonableness of a class action settlement agreement include ‘the strength of plaintiffs’ case,
22 the risk, expense, complexity and likely duration of further litigation, the risk of maintaining
23 class action status through trial, the amount offered in settlement, the extent of discovery
24

25
26 ¹⁰ The California Supreme Court has authorized California’s trial courts to use Rule 23 of the
27 Federal Rules of Civil Procedure and cases applying it for guidance in considering class issues.
28 *See Vasquez v. Super. Ct.*, 4 Cal. 3d 800, 821 (1971).

completed and stage of the proceedings, and the experience and views of counsel.”¹¹ *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008) (quoting *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996)).

In the class settlement context, “a presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Dunk*, 28 Cal. App. 4th at 1802.

1. The Settlement is the Product of Arm’s Length Negotiations by Experienced Counsel After Sufficient Information Exchange.

“The court . . . should give considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in assuring itself that a settlement agreement represents an arm’s length transaction entered without self-dealing or other potential misconduct.” *Kullar*, 168 Cal. App. 4th at 129.

Here, the proposed Settlement was reached through vigorous, hard-fought, arm’s-length negotiation between lawyers with significant experience. Plaintiffs’ Counsel are experienced in the litigation, certification, settlement, and trial of wage and hour class actions cases similar to this case. Sagafi Decl. ¶¶ 5-8. Tripper Ortman, who assisted the Parties in negotiating the settlement, is an experienced and well-respected mediator with years of complex class and collective litigation experience. *Id.* ¶ 31.

The Parties also engaged in sufficient mediation discovery to recommend settlement. *Id.* ¶ 28. Everlaw provided Plaintiffs’ Counsel with dates of employment and compensation data for each Class Member as well as Plaintiffs’ personnel files, Sales Representatives’ job

¹¹ *Kullar* also lists as factors “the presence of a governmental participant, and the reaction of the class members to the proposed settlement.” 168 Cal. App. 4th at 128. Here, the proposed settlement did not involve the presence of a governmental participant; therefore, this factor is neutral and does not weigh in favor of or against preliminary approval. Class Members have not yet been notified of the proposed Settlement so the Court cannot evaluate Class Members’ reaction. The Court can evaluate this factor at the final approval stage, after notice has issued to Class Members, and after the Court has had an opportunity to review any objections and the number of exclusion requests.

descriptions, and company compensation plans and other policies. *Id.* The Parties exchanged extensive mediation statements which outlined the key arguments they would make in the course of the litigation. *Id.* ¶ 29. Plaintiffs' Counsel provided Everlaw with Plaintiffs' detailed declarations, which described their job responsibilities and hours worked and the similarities they shared with other Sales Representatives. *Id.* Plaintiffs' Counsel also produced documents in Plaintiffs' possession reflecting information about their duties and compensation. *Id.* This substantial information exchanged was more than sufficient to create "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." *Kullar*, 168 Cal. App. 4th at 120.

Moreover, there is no risk of a reverse auction here. This further buttresses a finding that the negotiations were conducted at arm's-length. In circumstances where additional plaintiffs are pursuing overlapping claims, and those plaintiffs were not present and active in the mediation, there is often a presumption that the settlement suffers from the structural defect of a reverse auction. Specifically, the court is on guard that the settlement might be an attempt to subvert parallel overlapping litigation, and the settlement dollar amount and other terms are depressed because the settling plaintiff hopes to beat the nonsettling plaintiff in a race to the bottom. Here, Everlaw has confirmed that there is no competing class action, so the specter of a reverse auction is not present, and a finding that the settlement negotiations were truly arm's-length and non-collusive is appropriate. *Sagafi Decl.* ¶ 26.

Given that the settlement is the product of good faith arm's-length negotiations involving the participation of an experienced mediator after meaningful document exchange and was negotiated by experienced counsel, this settlement is entitled to a presumption of fairness and preliminary approval is warranted.

2. The Settlement Provides Substantial Relief for Class Members.

The Court should approve the proposed Settlement because it provides substantial relief to the Settlement Class relative to the theoretical maximum recovery. The average net award (after deduction for attorneys' fees, costs, service awards, and administration) Class Members

stand to recover is approximately \$251.65 per workweek, with an estimated average net total payment of \$11,825 per Class Member if all of the approximately 46 Class Members participate. Sagafi Decl. ¶ 40. This is a substantial portion of the unpaid wages and other damages Class Members could have recovered at trial, as described below.

a. Recovery for Unpaid Overtime, Penalties, and Related Damages

- Unpaid Overtime. Plaintiffs' Counsel estimated overtime damages based on five hours of unpaid overtime per Class Member, assuming Class Members worked overtime in 90% of the total 2,212.1¹² workweeks (to account for periods of vacations, leave, and other days off). Everlaw did not maintain records of Class Members' work hours or breaks, so Plaintiffs estimated the average overtime hours per week based on interviews with Plaintiffs and Plaintiffs' observations of their co-workers. Multiplying the average overtime rate (\$71.45) by the total number of workweeks and Plaintiffs' estimated average number of five overtime hours per week results in a total exposure of approximately **\$711,282** in unpaid overtime wages. Sagafi Decl. ¶¶ 39, 43.

- FLSA Liquidated Damages. Unless it can show a good faith defense, an employer who violates the FLSA is liable to employees for liquidated damages equal to the unpaid overtime wages. 29 U.S.C. §§ 216, 260. Here, based on the assumptions above, the Settlement Class could have recovered **\$706,987** in liquidated damages (an amount equal to the unpaid wages for the approximately 2,198.8 workweeks within the three-year FLSA Period)¹³ if Plaintiffs succeeded in rebutting Everlaw's good faith defense. Sagafi Decl. ¶ 39, 44.

- Interest. Plaintiffs' Counsel estimates that interest on the overtime damages

¹² Plaintiffs' Counsel calculated potential exposure with 2,212.1 workweeks (10% more workweeks than the 2,011 identified at the February 18, 2020 mediation, because the number of workweeks since mediation has increased by more than 10%, and the Total Settlement Amount covers up to a 10% increase in workweeks. *Id.* ¶ 42.

¹³ Even though liquidated damages only accrue for claims within the three-year FLSA period, this number is similar to the total overtime exposure (for the four-year period pursuant to California law) because the vast majority of Sales Representative workweeks fall in the three-year FLSA period, when Everlaw began hiring the bulk of its salesforce. Sagafi Decl. ¶ 44.

amounts to approximately **\$100,631**. *Id.* ¶ 45.

- Meal and Rest Break Penalties. Plaintiffs allege that Everlaw's commission-focused culture meant that Sales Representatives skipped meals or ate at their desk while continuing to send emails and prospect for clients. Plaintiffs' Counsel estimated that there were five missed breaks (either meal or rest break) per week¹⁴ for 90% of workweeks. Multiplying the one hour of premium pay per violation times five violations per week by the regular hourly rate (\$47.64) for 90% of the total number of workweeks (2,212.1) results in a total maximum recovery of approximately **\$474,188**. *Id.* ¶¶ 39, 46.

- Waiting Time Penalties. Labor Code § 203 provides a penalty in the amount of thirty days' pay where an employer willfully fails to pay an employee all owed wages at the time of separation. Approximately 21 Class Members have separated from Everlaw. Using the average hourly rate (\$47.64), an average 8-hour day, and the 30-day penalty, Plaintiffs' Counsel estimated waiting time penalties as approximately **\$240,084**. Sagafi Decl. ¶¶ 39, 47.

- Wage Statement Penalties. Labor Code § 226(e) provides statutory penalties in the amount of \$50 for the initial pay period and \$100 for each subsequent pay period, up to a maximum of \$4,000 where an employer knowingly and intentionally fails to provide an accurate wage statement to an employee. The statute of limitations for this claim is one year. *Hernandez v. Towne Park, Ltd.*, 2012 WL 2373372, No. 12 Civ. 02972, at *14 (C.D. Cal. June 22, 2012). Here, the Settlement Class could have recovered **\$68,800** in wage statement penalties based on the 1,500.63 workweeks within the one-year statute of limitations period. Sagafi Decl. ¶ 39, 48.

In sum, the maximum total exposure for Class Members' wage and hour claims, excluding PAGA claims, is approximately **\$2,301,772**.¹⁵ The Total Settlement Amount thus

¹⁴ Labor Code § 226.7 permits up to two premium payments per work day, one for a missed meal break and one for a missed rest break. *United Parcel Serv. v. Superior Court*, 196 Cal. App. 4th 57, 60 (2011). Plaintiffs' Counsel assume that Class Members missed either a meal break or a rest break once per day. Sagafi Decl. ¶ 46.

¹⁵ Plaintiffs' Counsel did not calculate a separate estimated exposure for expense reimbursement damages in advance of mediation because the potential exposure was small

1 represents a 39% recovery for Class Members' Labor Code and FLSA claims, and the Net
2 Fund represents a 24% recovery. Sagafi Decl. ¶ 50. This recovery is substantial given the
3 litigation risks and the risks in recovering the full extent of possible damages and penalties.
4 *See, e.g., In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (finding a gross
5 recovery of approximately one sixth (16.67%) of the potential recovery adequate in light of
6 litigation risks); *Villegas v. J.P. Morgan Chase & Co.*, No. 09 Civ. 00261, 2012 WL 5878390,
7 at *6 (N.D. Cal. Nov. 21, 2012) (preliminarily approving a settlement where the gross amount
8 represented approximately 15% of the potential recovery).

9 **b. Recovery for PAGA Penalties¹⁶**

10 The Settlement provides that \$18,500 of the Total Settlement Amount will be allocated
11 to the Settlement of the PAGA Group's claims, which represents approximately 2% of the
12 Total Settlement Award.¹⁷ Ex. 1 (Settlement Agreement) § 1.23; Sagafi Decl. ¶ 51. Plaintiffs
13 estimated maximum PAGA penalties at approximately \$734,850 based on the above Labor
14 Code violations. The PAGA Fund represents approximately 2.5% of Plaintiffs' maximum
15 theoretical PAGA recovery. Sagafi Decl. ¶ 51. This recovery is reasonable because of courts'
16 discretion to reduce PAGA penalties (Cal. Lab. Code § 2699(e)(2)) and well within the range
17 that courts routinely approve. *See, e.g., Ruch v. AM Retail Grp., Inc.*, No. 14 Civ. 05352, 2016
18 WL 5462451, at *7 (N.D. Cal. Sept. 28, 2016) (approving PAGA recovery that represented less
19 than 2% of maximum potential recovery); *McLeod v. Bank of Am., N.A.*, No. 16 Civ. 03294,
20 2018 WL 5982863, at *2, *4 (N.D. Cal. Nov. 14, 2018) (same).

21
22 (Plaintiffs' unreimbursed expenses were a few hours of home internet use for business purposes
23 per week) and the risks in certifying and proving those claims were high, and thus that their
value would be adequately covered by the substantial recovery for other claims. Sagafi Decl. ¶
49.

24 ¹⁶ Plaintiff Marks gave notice to the LWDA of her intent to pursue PAGA penalties as required
25 by Cal. Lab. Code § 2699.3. Sagafi Decl. ¶ 51. Plaintiffs' Counsel also submitted a copy of the
proposed settlement to the LWDA, as required by Cal. Lab. Code § 2699(l)(2). *Id.*

26 ¹⁷ Courts that look at the proportion of the PAGA settlement to the overall settlement recovery
27 have approved proportionate recoveries of around 2% or less. *See, e.g., Van Kempen v.*
28 *Matheson Tri-Gas, Inc.*, No. 15 Civ. 00660, 2017 WL 3670787, at *10 (N.D. Cal. Aug. 25,
2017) (1.4 percent); *Slavkov v. Fast Water Heater Partners I, LP*, Case No. 14 Civ. 04324, 2017
WL 3834873, at *1 (N.D. Cal. July 25, 2017) (2.2 percent).

3. Plaintiffs Faced Significant Risks in the Absence of Settlement.

This settlement recovery is particularly reasonable in light of the significant litigation risks Plaintiffs faced. Sagafi Decl. ¶¶ 52-53. Although Plaintiffs believe their case is strong, they recognize that class action litigation inherently involves risk and delay, *see Ferguson*, 30 Cal. 4th at 1054 (class actions “present unusually large risks for litigants”), and that they faced particular risks here. *Id.* ¶ 53.

First, there was a risk that Plaintiffs would not succeed in certifying or maintaining the class and collective through trial. Everlaw would likely argue that differences among Sales Representatives’ job duties or compensation levels preclude class certification or warrant decertification of a collective, if certified. Although Plaintiffs disagree, Plaintiffs recognize that obtaining and maintaining class certification is always a significant obstacle. *Id.* ¶ 54.

Second, a trial on the merits would involve significant risks for Plaintiffs on liability issues. Everlaw would argue that Sales Representatives were properly classified as overtime-exempt (as “administrators,” outside salespeople, commissioned salespeople, or some combination of exemptions). Although Plaintiffs believe that Sales Representatives’ job duties do not qualify them for any of the relevant exemptions, Plaintiffs’ Counsel recognizes that each exemption inquiry is highly contextual and that litigation of exemption defenses inherently poses significant risks. *Id.* ¶ 55.

Third, a trial on the merits would entail various risks for Plaintiffs in establishing damages. Everlaw would claim that Class Members did not miss meal or rest breaks and dispute the number of hours Sales Representatives claim to have worked.¹⁸ Without contemporaneous records of time worked and breaks taken (which Everlaw did not maintain), proving the existence and extent of overtime hours worked and breaks missed would be an evidentiary challenge. *Id.* ¶ 56.

¹⁸ For example, Everlaw contended that Sales Representatives worked far fewer than five overtime hours per week and asserted that only some Sales Representatives missed some meal periods. *Id.* ¶ 56.

1 To establish a third year of liability and liquidated damages under the FLSA, as well as
2 waiting time and wage statement penalties, Plaintiffs faced risk to overcome Everlaw’s various
3 state of mind defenses—that any violations were not willful, knowing, or intentional, and that
4 compliance was attempted in good faith. *Id.* ¶ 57.

5 To recover maximum PAGA penalties, Plaintiffs would need to establish that penalties
6 should be stacked, and defeat Everlaw’s likely argument that plaintiffs may recover heightened
7 PAGA penalties only after a court or the Labor Commissioner has determined that the
8 employer violated the Labor Code. *See, e.g., see Amaral v. Cintas Corp. No. 2*, 163 Cal. App.
9 4th 1157, 1209 (2008); *see also* Sagafi Decl. ¶ 58.

10 In sum, although Plaintiffs would dispute each of Everlaw’s arguments, a class trial and
11 the formal discovery process to prepare for it would be long, arduous, and risky; and even if
12 Plaintiffs prevailed on each of their claims, they might face a lengthy appeals process. In light
13 of the myriad risks and delay that litigation would entail, and based on Plaintiffs’ Counsel’s
14 experience litigating class actions and employment lawsuits, it is the opinion of Plaintiffs’
15 Counsel that the proposed Settlement is in the best interests of the Class Members. Sagafi
16 Decl. ¶ 59.

17 * * *

18 Because all of the considerations indicate that the Settlement is fair, adequate, and
19 reasonable, the Court should grant preliminary approval of the Settlement.

20 **D. The Proposed Notice and Settlement Procedure Are Appropriate.**

21 Constitutional due process requires that notice to class members provides sufficient
22 information to make an informed decision to accept or object to a proposed settlement and an
23 opportunity to be heard in the proceedings. *See Mullane v. Cent. Hanover Bank & Trust Co.*,
24 339 U.S. 306, 314 (1950); *Wershba v. Apple Comput., Inc.*, 91 Cal. App. 4th 224, 251-52
25 (2001), *disapproved of on another ground in Hernandez*, 4 Cal. 5th 260. The proposed Notice
26 satisfies these requirements.

27 The content of the proposed Notice is appropriate because it provides sufficient
28

1 information for Class Members to decide whether to participate in, object to, or opt out of the
2 Settlement and meets all of the requirements of California Rule of Court 3.766(d). It provides
3 (1) a brief explanation of the case, (2) the material terms of the settlement, (3) the proposed
4 fees and costs of Plaintiffs' Counsel and settlement administration, (4) the proposed Service
5 Awards to Plaintiffs, (5) that Class Members may opt out of or object to the Settlement (and
6 instructions on how to do so), (5) a statement that the settlement will bind all Class Members
7 who do not request exclusion, (6) a statement that any Class Member who does not request
8 exclusion may, if she so desires, enter an appearance through counsel, (7) details about the
9 court hearing on settlement approval and the opportunity to object; and (8) how Members can
10 obtain additional information, including documents related to the settlement. Ex. 1 (Settlement
11 Agreement) at Ex. A (Notice).

12 The manner of giving notice also complies with California Rule of Court 3.766(e)
13 because the proposed procedure for distributing the Notice has a likelihood of reaching a
14 substantial percentage of Class Members. The Notice will be sent via First Class U.S. mail and
15 e-mail to the last known address of each Class Member, and the Settlement Administrator shall
16 attempt to obtain the correct address for each Settlement Class Member whose Notice is
17 returned as undeliverable, including up to two skip traces, and shall attempt a re-mailing
18 provided it obtains a more recent address. Ex. 1 § 5(C). *Id.* Further, the Notice will provide
19 the address of the website established by the Settlement Administrator so that Class Members
20 will be able to read the settlement agreement and court filings. *Id.*

21 The proposed Settlement Administrator, Rust Consulting, is experienced in the field and
22 was chosen only after comparing bids from a number of other well-known administrators.
23 Sagafi Decl. ¶ 60; Ex. 2 (Bishop Decl.) ¶ 2. The Court should approve Rust Consulting, which
24 estimated that its fees for administering the settlement shall be approximately \$11,500. Ex. 1
25 (Settlement Agreement) § 3(B); Ex. 2 (Bishop Decl.) ¶ 16.

E. A Final Approval Hearing Should be Scheduled.

The last step in the settlement approval process is the formal hearing, at which the Court may hear evidence and argument necessary to evaluate the proposed Settlement. Cal. Rule of Ct. 3.769(e). The following schedule sets forth a proposed sequence for the relevant dates, assuming the Court grants preliminary approval of the Settlement:

7 calendar days after entry of order granting Preliminary Approval of Settlement	Everlaw to provide Settlement Administrator with the Class List (Ex. 1 (Settlement Agreement) § 5(A))
21 calendar days after entry of order granting Preliminary Approval of Settlement	Settlement Administrator mails Notice to Class Members (<i>Id.</i> §10.5(B))
60 calendar days after the Settlement Administrator mails Notice to Class Members (or 45 calendar days after Notice is re-mailed)	Response deadline to opt-out or object (<i>Id.</i> §10.5(D))
16 court days before Final Approval Hearing	Last day for Class Counsel to file Motion for Final Approval and motion for an award of attorneys' fees, costs, and Class Representative Service Award
_____, 2020	Final Approval Hearing
_____, 2021	Final Accounting/Dismissal Hearing

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court (1) grant preliminary approval of the proposed Settlement; (2) preliminarily certify the Settlement Class and conditionally certify the Settlement Collective for settlement purposes; (3) approve the form, content, and method of distribution of the Notice; (4) appoint Rust Consulting, Inc., as the Settlement Administrator; (5) appoint Outten & Golden LLP as Class Counsel; (6) appoint Plaintiffs as Settlement Class Representatives; and (7) schedule a hearing to consider final approval of the settlement.

1 Dated: July 9, 2020

2 By:



3 Jahan C. Sagafi

4 Jahan C. Sagafi (SBN 224887)
5 Molly J. Frandsen (SBN 320094)
6 OUTTEN & GOLDEN LLP
7 One California Street, Suite 1250
8 San Francisco, CA 94111
9 Telephone: (415) 638-8800
10 Facsimile: (415) 638-8810
11 E-Mail: jsagafi@outtengolden.com
12 E-Mail: mfrandsen@outtengolden.com

13 Melissa L. Stewart*
14 OUTTEN & GOLDEN LLP
15 685 Third Avenue, 25th Floor
16 New York, NY 10017
17 Telephone: (212) 245-1000
18 Facsimile: (646) 509-2060
19 E-mail: mstewart@outtengolden.com

20 *pro hac vice motion pending