

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MARIO SARABIA, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

RICOH USA, INC., RICOH LOGISTICS
CORPORATION, and DOES 1-50 ALL
INCLUSIVE,

Defendants.

CASE No. 8:20-cv-00218-JLS-KES

**ORDER GRANTING PLAINTIFF'S
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT (Doc.
73) AND SETTING A FINAL
FAIRNESS HEARING DATE FOR
MARCH 24, 2023 AT 10:30 A.M.**

Before the Court is an Unopposed Motion filed by Plaintiff Mario Sarabia seeking preliminary approval of a proposed class action settlement of wage and hour claims. (Mot., Doc. 74; Mem., Doc. 73-1.) Sarabia asks the Court to (1) certify the proposed Class for settlement purposes only; (2) appoint Sarabia as Class Representative; (3) appoint as Class Counsel Stan Mallison, Hector Martinez, Heather Hamilton, and Farrah Mirabel; (4) approve Simpluris, Inc. as the settlement administrator; (5) approve the form and manner of Class Notice; and (6) schedule a final fairness hearing date. (*See* Mem. at 3.) The Court requested supplemental briefing as to Sarabia’s calculation of maximum potential liability and the resolution of Sarabia’s individual claims against Defendants. (Order Requesting Supplemental Briefing (“Order 1”), Doc. 76.) Sarabia filed the supplemental briefing on September 7, 2022. (Supp’l Brief, Doc. 77.) On September 14, 2022, the Court requested further supplemental briefing on how Defendants’ maximum potential liability was calculated. (Order Requesting Further Supplemental Briefing (“Order 2”), Doc. 79.) Sarabia filed the further supplemental briefing on September 28, 2022. (Further Supp’l Brief, Doc. 80.) Having read and considered the papers, the Court finds this matter appropriate for decision without oral argument and the hearing set for October 14, 2022, at 10:30 a.m. is VACATED. For the following reasons, the Court GRANTS Sarabia’s Motion and sets a final fairness hearing for March 24, 2013 at 10:30 a.m.

I. BACKGROUND

Defendants employed Plaintiff Mario Sarabia as an hourly-paid employee at their Orange County location. (Third Amended Complaint (“TAC”) ¶¶ 16–17, Doc. 33.) In a complaint filed in Orange County Superior Court on December 2, 2019, Sarabia alleged that Defendants had policies and practices that resulted in the following violations of the California Labor Code:

- failure to provide off-duty rest and meal periods as required by law;

- failure to compensate employees at the required rate for each occasion in which Defendants failed to provide rest and meal breaks;
- failure to pay overtime wages and for all hours worked;
- failure to keep accurate payroll records;
- failure to timely produce the employee's records;
- failure to pay all wages due upon separation;
- failure to pay the minimum wage and all wages earned; and
- failure to pay for sick days.

(Original Complaint ¶ 3, Doc. 1; *cf.* TAC ¶ 3.) Sarabia also sought individual remedy for Defendants' alleged failure to accommodate and engage in the interactive process, unlawful discrimination, and wrongful and retaliatory termination. (*Id.*) Defendants removed the action to federal court on January 21, 2020, invoking federal jurisdiction under the Class Action Fairness Act ("CAFA"). (Notice of Removal, Doc. 1.) Sarabia filed the TAC, which is the operative complaint here, on March 23, 2021.

The class claims in the TAC are: (1) failure to provide or allow meal periods in violation of California Labor Code sections 226.7(a); (2) failure to pay for missed meal periods in violation of California Labor Code sections 226.7(a) and 512; (3) failure to pay overtime in violation of California Labor Code sections 510 and 1194; (4) failure to pay minimum wage for all wages earned in violation of California Labor Code sections 204, 1194, and 1197; (5) failure to maintain accurate payroll records and produce the records in violation of California Labor Code sections 226, 1174, and 1198.5; (6) failure to pay wages upon separation in violation of California Labor Code sections 201, 202, and 203; (7) failure to pay for sick days in violation of California Labor Code section 246(a); (8) unlawful and unfair business acts and practices in violation of California Business & Professions Code section 17200; and (9) claims pursuant to the Private Attorney General Act for violation of California Labor Code sections 2698, 2699, and 2699.5. (TAC ¶¶ 32–73, 116–21.)

Sarabia's Counsel assert that they have conducted a thorough examination of payroll and personnel records from Defendants and interviewed Sarabia in detail regarding the alleged unlawful policies. (Mem. at 4.) After Defendants produced payroll and timekeeping records for Class members covering the putative Class period, Sarabia's Counsel engaged in extensive review of the records with the assistance of a database expert, Aaron Woolfson. (*Id.*; Mallison Decl. ¶¶ 18–19, Doc. 73-2.) Sarabia and Defendants were guided by this data and analysis in their settlement negotiations. (Mem. at 4.)

The settlement provides for a non-reversionary gross settlement fund of \$1,000,000. (*Id.*) The fund will cover attorneys' fees up to 35% of the gross settlement amount; costs, not to exceed \$50,000; a Class Representative payment to Sarabia of up to \$10,000; a payment for release of Private Attorneys General ("PAGA") claims of up to \$30,000, of which \$22,500 shall be remitted to the Labor and Workforce Development Agency; and settlement administration costs of approximately \$8,000. (*Id.* at 2, 4–6.) This leaves a net settlement fund of approximately \$559,500 to be distributed to the approximately 500 putative Class members. (*Id.* at 6.) The net settlement fund will be distributed to participating Class members "on a pro rata basis, calculated by dividing the Net Settlement Amount by the total number of workweeks worked by each Class member from December 2, 2015, to February 12, 2022[.]" (*Id.* at 5.) The amount allocated to the release of the PAGA claims returned to the settlement amount (\$7,500) will be distributed pro rata only to Class members employed between April 16, 2021 and February 12, 2022 based on their number of pay periods within those dates. (*Id.* at 6.) Sarabia estimates that the average net recovery will be approximately \$1,119 per Class member. (*Id.* at 6.)

In return for the net settlement fund payments, Sarabia and settlement Class members release the following:

[A]ny and all claims, rights, demands, liabilities obligations, penalties, costs, expenses, attorneys' fees, rights, damages, suits, indemnities, actions and

causes of action of every nature and description whatsoever in law, equity or otherwise, whether known or unknown, that each Participating Class member had, now has, or may hereafter claim to have against the Released Parties based upon the alleged failure to provide compliant meal periods and/or pay meal period premiums during the Class Period including, but not limited to, those arising under California Labor Code sections 201, 202, 203, 204, 210, 226, 226.7, 512, 1174, 1194, and 1197, and Business and Professions Code § 17200 *et seq.*

(Settlement Agreement § III.P; Mem. at 14–15.)

The Settlement Agreement provides that Sarabia will receive, subject to court approval, a Class Representative payment of up to \$10,000. (Settlement Agreement § III.F.1.) The Settlement Agreement further provides that Class Counsel will apply for (1) a fee award of up to 35% of the settlement fund, or \$350,000 and (2) an award of costs up to \$50,000. (*Id.* § III.F.2.) Defendants agree to not oppose Sarabia’s Class Representative payment. (*Id.*) The settlement administrator will also be paid from the gross settlement fund for the reasonable costs of administering this settlement. (*Id.* § III.F.3.) Those costs are estimated at approximately \$8,000. (Mem. at 5.) Class Counsel request that the Court appoint Simpluris, Inc. as the settlement administrator. (*Id.* at 8.)

The Settlement Agreement also describes the process for Class Notice. Within ten days of the Court’s granting preliminary approval of the settlement, Defendants will provide the settlement administrator with “an electronic database containing the names, last known addresses and social security numbers of the Class members employed by that Defendant, as well as the Class Weeks and PAGA Pay Periods for each Class member.” (Settlement Agreement § III.J.2.a.) Within seven days of receiving that data, the settlement administrator will mail the Class Notice by first class mail. (*Id.* § III.J.2.b.) The settlement administrator will conduct a National Change of Address (“NCOA”) search to update any addresses provided before mailing the Class Notice. (*Id.*) If a Class Notice is returned because of an incorrect address, the settlement administrator will search for a

more current address for the Class member within ten days of receiving the returned Notice and mail another Notice to the Class member. (*Id.* § III.J.2.e.)

Generally, Class members will have forty-five days from the initial mailing of class notice to seek exclusion from the settlement or object to its terms. (*Id.* § III.J.4.a–b.) Any Class members who fail to provide timely objections to the settlement are deemed to have waived any objections and will be foreclosed from making any objection to the settlement. (*Id.*)

Sarabia now moves for preliminary approval of the proposed settlement. (Mot.) The parties contend that the proposed settlement is fair, reasonable, adequate, and in the best interest of the proposed class. (Mem. at 12–13.) In his Memorandum in support of the Motion, Sarabia failed to provide adequate information regarding the selection and qualifications of the proposed settlement administrator, Simpluris; the Memorandum also did not provide sufficient information for the Court to evaluate whether the settlement amount was fair and reasonable. (*See* Order 1, Order 2.) On September 7 and September 28, 2022, Sarabia filed supplemental briefs and declarations addressing these issues. (Supp’l Brief; Further Supp’l Brief.)

II. CONDITIONAL CERTIFICATION OF THE CLASS

Sarabia asks the Court to conditionally certify the Settlement Class (“Class”) for settlement purposes under Rule 23(a) and 23(b)(3). (Mem. at 16–17.) The Class is defined as “approximately 500 laborers who are hourly, non-exempt employees of Defendants RICOH USA, INC., and RICOH LOGISTICS CORPORATION, who performed the duties of laborer, forklift driver or field distributor, in the State of California during the period commencing December 2, 2015 through February 12, 2022.” (Mem. at 1.) The Class excludes “any person who signed a General Release on or before December 2, 2019 in connection with the termination of their employment and in favor of all Defendants by which the individual was employed during the Class Period.” (*Id.* at 1 n.1.)

“A party seeking class certification must satisfy the requirements of Federal Rule of Civil Procedure 23(a) and the requirements of at least one of the categories under Rule 23(b).” *Wang v. Chinese Daily News, Inc.*, 737 F.3d 538, 542 (9th Cir. 2013). Rule 23(a) “requires a party seeking class certification to satisfy four requirements: numerosity, commonality, typicality, and adequacy of representation.” *Id.* (citing *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349 (2011)). Rule 23(a) provides:

One or more members of a class may sue or be sued as representative parties on behalf of all members only if:

- (1) the class is so numerous that joinder of all members is impracticable;
- (2) there are questions of law or fact common to the class;
- (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
- (4) the representative parties will fairly and adequately protect the interests of the class.

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

“Rule 23 does not set forth a mere pleading standard. A party seeking class certification must affirmatively demonstrate his compliance with the Rule—that is, he must be prepared to prove that there are *in fact* sufficiently numerous parties, common questions of law or fact, etc.” *Dukes*, 564 U.S. at 350. This requires a district court to conduct a “rigorous analysis” that frequently “will entail some overlap with the merits of the plaintiff’s underlying claim.” *Id.* at 350–51.

“Second, the proposed class must satisfy at least one of the three requirements listed in Rule 23(b).” *Id.* at 345. Here, Sarabia seeks certification of the class under Rule 23(b)(3), which permits maintenance of a class action if “the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).

A. The Proposed Class Meets All Rule 23(a) Requirements

1. Numerosity

Rule 23(a)(1) requires that the class be “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). Here, there are a total of approximately 500 Class members. (Mem. at 16; Mallison Decl. ¶ 23, Doc. 73-2.) Numerosity is plainly met for the proposed Class.

2. Commonality

Rule 23(a)(2) requires that “there are questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). “Commonality requires the plaintiff to demonstrate that the class members have suffered the same injury.” *Dukes*, 564 U.S. at 349–50 (cleaned up). The plaintiff must allege that the class’ injuries “depend upon a common contention” that is “capable of classwide resolution.” *Id.* at 350. In other words, the “determination of [the common contention’s] truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Id.* “What matters to class certification ... is not the raising of common questions—even in droves—but, rather the capacity of a classwide proceeding to generate common *answers* apt to drive the resolution of the litigation.” *Id.* (cleaned up).

Here, Sarabia claims that he and all other Class members were subject to the same policies and practices whereby Defendants failed to provide Class members with timely meal and rest periods and failed to pay overtime wages. (Mem. at 16.) Sarabia’s claims present common questions such as whether Defendant failed to pay Class members for all hours worked or paid appropriate overtime wages, and those questions can be answered by reference to uniformly applied policies and practices and common records kept by Defendants. Sarabia has therefore satisfied the commonality requirement.

3. Typicality

Rule 23(a)(3) requires “the claims or defenses of the representative parties [to be] typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). “[U]nder the rule’s permissive standards, representative claims are ‘typical’ if they are reasonably coextensive with those of absent class members; they need not be substantially identical.” *Dukes v. Wal-Mart Stores, Inc.*, 603 F.3d 571, 613 (9th Cir. 2010) (en banc) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998)), *rev’d on other grounds*, 564 U.S. 338 (2011). As to the representative, “[t]ypicality requires that the named plaintiffs be members of the class they represent.” *Id.* (citing *Gen. Tech. Co. of Sw. v. Falcon*, 457 U.S. 147, 156 (1982)). The commonality, typicality, and adequacy-of-representation requirements “tend to merge” with each other. *Dukes*, 564 U.S. at 349 n.5 (citing *Falcon*, 457 U.S. at 157–58 n.13).

Here, Sarabia asks that he be named Class Representative. (Mem. at 3.) Sarabia’s claims, like those of the proposed Class, are based on his contention that Defendants: (1) required employees to arrive early for their shift, and work past their schedule shift while they waited to be relieved by another employee without compensation; (2) failed to provide timely and adequate meal periods and rest periods; and (3) provided wage statements that did not reflect all hours worked or premium payments for late or interrupted meal and rest periods. (*Id.* at 17; Mallison Decl. ¶ 17.) The claims arise from the same alleged policies and practices, and Sarabia falls within the settlement Class definition. (Sarabia Decl. ¶¶ 7–8, Doc. 73-7.) Thus, typicality is met.

4. Adequacy

Rule 23(a)(4) permits certification of a class action only if “the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). “Resolution of two questions determines legal adequacy: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and

(2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?” *Hanlon*, 150 F.3d at 1020.

Sarabia’s claims arise out of the same set of facts as the claims for the proposed Class, and his interest in obtaining the maximum recovery is coextensive with the interests of the Class members. Sarabia has already expended time and effort to prosecute this case and protect the interests of the proposed Class. (Mem. at 17; Sarabia Decl. ¶¶ 9–10; Mirabel Decl. ¶ 10, Doc. 73-6.) Although Sarabia has pressed as part of this action individual claims against Defendants for failure to accommodate and engage in the interactive process, unlawful discrimination, and wrongful and retaliatory termination, those claims are not part of the settlement before the Court. Sarabia has informed the Court that he has not settled his individual claims against Defendants and that he intends to proceed with those claims. (Supp’l Briefing at 3.) Sarabia’s briefing also indicates that the parties did not discuss settlement of his individual claims at all during mediation and settlement negotiations, which focused exclusively on the value of the class claims. (*Id.* at 3–4.) Because Sarabia’s individual claims are not part of the class settlement, are not subject to a side agreement, and did not influence the negotiation of the class settlement, the Court finds that those claims do not present a potential conflict of interest between Sarabia and the Class members he seeks to represent. Accordingly, the Court concludes that Sarabia is an adequate class representative.

As to the adequacy of Sarabia’s counsel, the Court must consider “(i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel’s knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class.” Fed. R. Civ. P. 23(g)(1)(A). Here, Sarabia asks that the Court appoint Stan Mallison, Hector Martinez, Heather Hamilton, and Farrah Mirabel as Class Counsel. (Mem. at 3.) Attorneys Stan Mallison and Farrah Mirabel have provided declarations describing their experience

litigating wage and hour claims on a class basis. (Mallison Decl. ¶¶ 4–13; Mirabel Decl. ¶¶ 4–6.) From this experience, it appears that Mallison, Martinez, Hamilton, and Mirabel have knowledge of the applicable law in this area. Based on the experience and work of Sarabia’s proposed Class Counsel, the Court concludes that they have satisfied the adequacy requirement. The Court therefore certifies Mallison, Martinez, Hamilton, and Mirabel as Class Counsel in this action.

B. The Proposed Classes Meet the Rule 23(b) Requirements

Sarabia seeks certification under Rule 23(b)(3). (Mem. at 20.) For the reasons set forth below, the Court holds that certification of the proposed Class is appropriate under Rule 23(b)(3).

Under Rule 23(b)(3), a class action may be maintained if: “[1] the court finds that the questions of law or fact common to class members *predominate* over any questions affecting only individual members, and [2] that a class action is *superior* to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. R. 23(b)(3) (emphases added). When examining a class that seeks certification under Rule 23(b)(3), the Court may consider:

- (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.

Id. The Court finds that Sarabia’s proposed Class satisfies both the predominance and superiority requirements.

1. Predominance

“[T]he predominance analysis under Rule 23(b)(3) focuses on the relationship between the common and individual issues in the case, and tests whether the proposed class is sufficiently cohesive to warrant adjudication by representation.” *Abdullah v. U.S. Sec. Associates, Inc.*, 731 F.3d 952, 964 (9th Cir. 2013) (cleaned up). “Rule 23(b)(3) requires [only] a showing that questions common to the class predominate, not that those questions will be answered, on the merits, in favor of the class.” *Id.* (alterations in original).

Here, Class members’ claims turn on whether Defendants’ practices of understaffing, not providing timely breaks, and interrupting breaks when they were provided resulted the underpayment of Class members in violation of wage and hour laws. (Supp’l Briefing at 5.) Sarabia’s expert, Aaron Woolfson, determined through an analysis of timekeeping data provided by Defendants that meal period violations occurred frequently and for over nine-tenths of Class members in each data set that he analyzed. (Supp’l Briefing at 5.) This common question and the common legal remedies will predominate in this action.

2. Superiority

The Court further finds that a class action would be a superior method of adjudicating Sarabia’s claims for the proposed Class. “The superiority inquiry under Rule 23(b)(3) requires determination of whether the objectives of the particular class action procedure will be achieved in the particular case.” *Hanlon*, 150 F.3d at 1023. “This determination necessarily involves a comparative evaluation of alternative mechanisms of dispute resolution.” *Id.* Here, each member of the proposed Class pursuing a claim individually would burden the judicial system and run afoul of Rule 23’s focus on efficiency and judicial economy. *See Vinole v. Countrywide Home Loans, Inc.*, 571 F.3d 935, 946 (9th Cir. 2009) (“The overarching focus remains whether trial by class

representation would further the goals of efficiency and judicial economy.”). The Court agrees with Sarabia that it would be needlessly time consuming and redundant for each Class member to conduct discovery into Defendants’ policies to prove similar allegations and present the same evidence. (Supp’l Briefing at 6.) Further, litigation costs would likely exceed potential recovery if each Class member litigated individually. “Where recovery on an individual basis would be dwarfed by the cost of litigating on an individual basis, this factor weighs in favor of class certification.” *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010) (cleaned up).

Considering the non-exclusive factors under Rule 23(b)(3)(A)–(D), the Court finds that Class members’ potential interests in individually controlling the prosecution of separate actions and the potential difficulties in managing the class action do not outweigh the desirability of concentrating this matter in one litigation. *See* Fed. R. Civ. P. 23(b)(3)(A), (C), (D). Therefore, the Court finds that Sarabia’s proposed Class may be certified under Rule 23(b)(3).

C. Rule 23(g) – Appointment of Class Counsel

Under Rule 23(g), “a court that certifies a class must appoint class counsel.” Fed. R. Civ. P. 23(g)(1). As previously stated in this Order, the Court is satisfied that Sarabia’s counsel is adequate and thus may be appointed as Class Counsel in this case.

Having found that the proposed Class satisfies the elements of Rule 23(a), the Court conditionally certifies the Class for settlement purposes only.

III. PRELIMINARY APPROVAL OF CLASS SETTLEMENT

To preliminarily approve a proposed class-action settlement, Rule 23(e)(2) requires the Court to determine whether the proposed settlement is fair, reasonable, and adequate. Fed. R. Civ. P. 23(e)(2). In turn, review of a proposed settlement typically proceeds in two

stages, with preliminary approval followed by a final fairness hearing. Federal Judicial Center, *Manual for Complex Litigation*, § 21.632 (4th ed. 2004).

“To determine whether a settlement agreement meets these standards, a district court must consider a number of factors, including: the strength of plaintiffs’ case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed, and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant;¹ and the reaction of the class members to the proposed settlement.” *Staton*, 327 F.3d at 959 (cleaned up). “The relative degree of importance to be attached to any particular factor will depend upon and be dictated by the nature of the claim(s) advanced, the type(s) of relief sought, and the unique facts and circumstances presented by each individual case.” *Officers for Justice v. Civil Serv. Comm’n of City & Cty. of S.F.*, 688 F.2d 615, 625 (9th Cir. 1982). “‘It is the settlement taken as a whole, rather than the individual component parts, that must be examined for overall fairness,’ and ‘the settlement must stand or fall in its entirety.’” *Staton*, 327 F.3d at 960 (quoting *Hanlon*, 150 F.3d at 1026) (alterations omitted).

In addition to these factors, where “a settlement agreement is negotiated *prior* to formal class certification,” the Court must also satisfy itself that “the settlement is not the product of collusion among the negotiating parties.” *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946-47 (9th Cir. 2011) (cleaned up). Accordingly, the Court must look for explicit collusion and “more subtle signs that class counsel have allowed pursuit of their own self-interests and that of certain class members to infect the negotiations.” *Id.* at 947. Such signs include (1) “when counsel receive a disproportionate distribution of the settlement,” (2) “when the parties negotiate a ‘clear sailing’ arrangement providing for the payment of attorneys’ fees separate and apart from class funds,” and (3) “when the parties

¹ This factor does not apply in this case.

arrange for fees not awarded to revert to defendants rather than be added to the class fund.” *Id.* (cleaned up).

At this preliminary stage and because Class members will receive an opportunity to be heard on the settlement, “a full fairness analysis is unnecessary[.]” *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 665 (E.D. Cal. 2008). Instead, preliminary approval and notice of the settlement terms to the proposed class are appropriate where “[1] the proposed settlement 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[.]” *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007) (cleaned up) (emphasis added); *see also Acosta v. Trans Union, LLC*, 243 F.R.D. 377, 386 (C.D. Cal. 2007) (“To determine whether preliminary approval is appropriate, the settlement need only be *potentially* fair, as the Court will make a final determination of its adequacy at the hearing on the Final Approval, after such time as any party has had a chance to object and/or opt out.”) (emphasis in original).

In evaluating all applicable factors below, the Court finds that the proposed settlement agreement should be preliminarily approved.

A. Strength of Plaintiff’s Case

The primary claims at issue here involve Defendants’ alleged failure to provide meal and rest breaks, pay overtime wages, and provide accurate wage statements as required under the California Labor Code. While Sarabia is confident that he would prevail on the merits of his claims, he is conscious that, “even if he stood to prevail on wage and break violation claims,” obtaining other damages and derivative penalties would be difficult. (Mem. at 11.) Sarabia cites as examples “the possibility ... that the Court would decline to enter a finding of ‘willfulness’ [as to Defendants’] untimely payment of wages to severed employees,” and that “the Court may have declined to find that there was

any ‘injury’ to Class members resulting from allegedly inaccurate wage statements.” (*Id.*) Moreover, “Defendants contested liability in this action ... and [were] prepared to vigorously defend against these claims if the action had not settled.” (*Id.* at 13.) The Court finds that given these potential obstacles, this factor weighs in favor of granting preliminary approval.

B. Risk, Complexity, and Likely Duration of Further Litigation

Sarabia argues that continued litigation would delay—or potentially eliminate—any payment to the Class. (*Id.* at 12.) Settlement eliminates the risks inherent in Defendants’ anticipated motions for summary judgment and class decertification, trial, and subsequent appeals, and it may provide the last opportunity for Class members to obtain relief. This factor therefore weighs in favor of granting preliminary approval. *See, e.g., Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) (“In most situations, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results.” (cleaned up)).

C. Risk of Maintaining Class Certification

The Court, in this Order, certifies the class for settlement purposes. The parties do not highlight any risks to obtaining or maintaining class certification throughout the course of litigation, and none are obvious to the Court. In any case, however, there remains a risk that a class may be decertified, and these risks have been held to be “not so minimal” as to preclude a Court granting preliminary approval to a settlement agreement. *See Rodriguez v. West Publishing Corp.*, 536 F.3d 948, 966 (9th Cir. 2009).

D. Amount Offered in Settlement

The Court finds that the amount offered in settlement is reasonable. The proposed settlement provides for a gross settlement fund of \$1,000,000, which is a substantial benefit to the class. (Mem. at 12–14; Supp’l Brief at 2–3.)

Class counsel calculated Defendants’ maximum potential liability based on detailed analysis of partial timekeeping and paycheck data produced by Defendants as to non-exempt laborers. First, database expert Aaron Woolfson calculated meal premium damages and penalties based on timekeeping records for 20% of Ricoh USA laborers and all Ricoh Logistics laborers. (Woolfson Decl. ¶ 2, Doc. 77-3; Further Supp’l Brief at 2.) Woolfson organized the timekeeping records into a database and calculated damages per individual employee, then aggregated those damages on a class-wide basis. (Woolfson Decl. ¶ 4.) Then, class counsel multiplied Woolfson’s calculations for Ricoh USA laborers by five and made a 5.27% adjustment to account for missing data. (*Id.*)

Woolfson’s calculations applied a two-step methodology. First, Woolfson structured the data into contiguous shifts, which allowed him to calculate the total compensable time worked in a day and the timing and length of 30-minute lunch periods, if taken. (Supp’l Woolfson Decl. ¶ 8, Doc. 80-1.) After calculating the sum of the compensable time, Woolfson compared it to actual paycheck amounts to determine whether all compensable time was paid to a particular employee. (*Id.* ¶ 9.)

Woolfson calculated a total of \$668,035.73 for meal premiums and interest based on the partial data that he was provided. (*Id.* ¶ 22(a).) He calculated this premiums as one hour of pay “for any shift where a shift was sufficient to require a meal, and the meal was (a) not present; or, (b) occurred, but not until greater than five (5) hours into the shift; or (c) occurred in a timely fashion but was not equal to at thirty (30) minutes in length; or, (d) the shift was greater than ten (10) hours, and there was no indication of a second[] meal.” (*Id.* ¶ 23.) Then, he applied 7% interest to the premiums from the date of occurrence through December 9, 2021.

Woolfson calculated a total of \$356,967.73 for waiting time penalties under California Labor Code Section 203. (*Id.* ¶ 22(b).) To reach this total in penalties, Woolfson multiplied 30 days by pay rate and average daily hours worked for each employee who did not work after November 30, 2020 day and experienced at least one shift violation and did not receive a premium. (*Id.* ¶¶ 22(b), 24.)

Woolfson calculated a total of \$93,250 for California Labor Code Section 226 violations. (*Id.* ¶ 22(c).) This calculation is based on the number of paychecks with meal violations occurring within the constituent shifts at \$50.00 per paycheck after December 2, 2018, with a cap of \$4,000.00 per employee. (*Id.* ¶¶ 22(c), 25.)

Class counsel extrapolated from Woolfson’s calculations to correct for missing data and account for all Class members as follows: (1) \$1,723,772, with interest of \$720,214.00—a total of \$2,443,986—for the meal premium claims; (2) \$1,034,634 for Section 203 penalties; and (3) \$490,838 for Section 226 penalties. (Further Supp’l Brief at 1.) Class counsel’s calculations yield a combined figure for damages covering meal premium damages and penalties for all employees of \$3,969,458. (*Id.*) Class counsel contends that the meal premium claims were the primary viable claims in this litigation (Mem. at 14; Mallison Decl. ¶ 35), which is why liability for other claims raised in the complaint was not calculated.

As for the value of the PAGA claims, neither Woolfson nor class counsel have estimated Defendants’ maximum potential liability because such claims were settled in a related case filed in California Superior Court without Sarabia’s involvement. (Further Supp’l Brief at 2.) The small portion allocated to PAGA claims in this settlement, \$30,000, accounts for a relatively small number of “anecdotal” violations within a portion of the class period (April 16, 2021 through February 12, 2022). (Mem. at 5; Further Supp’l Brief at 2–3.)

Adding together Defendants’ liability for unpaid meal premiums, waiting time penalties, and wage statement penalties—but excluding PAGA penalties—the maximum

potential liability reaches \$3,969,458, of which the gross settlement fund of \$1,000,000 is 25.2%. A “settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair,” *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (cleaned up), and this percentage equals or surpasses the recovery in other wage and hour class actions. *See Greko v. Diesel U.S.A., Inc.*, 2013 WL 1789602, at *5 (N.D. Cal. Apr. 26, 2013) (finding settlement amount of a wage and hour class action that constituted 24% of estimated damages to be reasonable and beneficial to the class); *Glass v. UBS Fin. Servs., Inc.*, 2007 WL 221862, at *4 (N.D. Cal. Jan. 26, 2007), *aff’d*, 331 F. App’x 452 (9th Cir. 2009) (finding settlement of a wage and hour class action that constituted 25% to 35% of the claimed damages to be reasonable); *Bellinghausen v. Tractor Supply Co.*, 303 F.R.D. 611, 623-24 (N.D. Cal. 2014) (finding settlement amount of a wage and hour class action that equaled between 9% and 27% of the total potential liability to be fair, adequate and reasonable given the uncertainty of continued litigation). Accordingly, in considering the difficulties of potential recovery, the Court finds that the amount offered in settlement weighs in favor of preliminary approval.

The allocation of settlement funds also appears fair, adequate, and reasonable. After other amounts are deducted from the gross settlement fund, the net settlement amount will be distributed as settlement shares to all participating Class members and allegedly aggrieved employees. (Mem. at 7.) The settlement shares will be calculated on a pro rata basis according to the workweeks each participating Class member worked during the class period and each allegedly aggrieved employee’s pay periods during the PAGA period. (*Id.*) Accordingly, the plan provides each Class member with a pro rata share of the net settlement fund. *See In re Oracle Sec. Litig.*, 1994 WL 502054, at *1 (N.D. Cal. June 18, 1994) (“A plan of allocation that reimburses class members based on the extent of their injuries is generally reasonable.”). This weighs in favor of preliminary approval.

Finally, the amount of the settlement also appears fair, adequate, and reasonable given the claims released by Sarabia and the settlement Class members. Each Class

member will release “any and all claims ... against [Defendants] based upon the alleged failure to provide compliant meal periods and/or pay meal period premiums during the Class Period including, but not limited to, those arising under California Labor Code sections 201, 202, 203, 204, 210, 226, 226.7, 512, 1174, 1194, and 1197, and Business and Professions Code § 17200 et seq.” (Settlement Agreement § III.P.) The scope of this release tracks the claims made in the operative complaint and therefore weighs in favor of preliminary approval. *See Hesse v. Sprint Corp.*, 598 F.3d 581, 590 (9th Cir. 2010) (“A settlement agreement may preclude a party from bringing a related claim in the future even though the claim was not presented and might not have been presentable in the class action, but only where the released claim is based on the identical factual predicate as that underlying the claims in the settled class action.” (cleaned up)).

1. *The Court’s Concerns*

Although the Court does not approve the proposed amount of attorneys’ fees and service payments at this stage, the Court raises its concerns with Sarabia’s proposed awards. First, the settlement provides for attorneys’ fees of 35% of the gross settlement fund, subject to court approval. (Settlement Agreement § III.B.2.) In the Ninth Circuit, the benchmark for fees is 25% of the common fund. *See In re Bluetooth*, 654 F.3d at 942. Before final approval, the court will “scrutinize closely the relationship between attorneys’ fees and benefit to the class” and will not “award[] unreasonably high fees simply because they are uncontested.” *Id.* at 948 (cleaned up). Class Counsel must therefore make a sufficient showing justifying any upward departure from the Ninth Circuit’s fees benchmark to be awarded 35% of the settlement fund.

Second, the settlement provides that Sarabia may apply for an incentive payment of \$10,000, subject to court approval. (*Id.* § III.B.1.) In his Application for Fees and Costs, Sarabia must justify why the requested incentive payment is reasonable. Sarabia is

cautioned that the requested attorneys' fees and service payments must be reasonable and justified in light of the circumstances of the case.

E. Stage of the Proceedings and Extent of Discovery Completed

This factor requires the Court to evaluate whether “the parties have sufficient information to make an informed decision about settlement.” *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1239 (9th Cir. 1998). Discovery can be both formal and informal. *See Clesceri v. Beach City Investigations & Protective Servs., Inc.*, 2011 WL 320998, at *9 (C.D. Cal. Jan. 27, 2011). Here, Class Counsel obtained and reviewed payroll and personnel records from Defendants and interviewed Sarabia in detail. (Mallison Decl. ¶ 18.) Then, Sarabia and Class Counsel conducted extensive written discovery and obtained timekeeping and payroll data for putative Class members. (*Id.* ¶ 19.) After Defendants produced the data sought, Class Counsel reviewed and analyzed the data to assess the values of the claims at issue with the assistance of the database expert they retained. (*Id.*) Given these facts, the Court concludes that the parties possess sufficient information to make an informed settlement decision. *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d at 459 (plaintiffs had “sufficient information to make an informed decision about the [s]ettlement” where formal discovery had not been completed but class counsel had “conducted significant investigation, discovery and research, and presented the court with documentation supporting those services”). Accordingly, this factor weighs in favor of granting preliminary approval.

F. Experience and Views of Counsel

As discussed above, Class Counsel have extensive experience litigating wage and hour claims on a class basis. Class Counsel are experienced and knowledgeable in this area of the law and they have endorsed the Settlement as fair, reasonable, and adequate.

Parties represented by competent counsel are well-positioned “to produce a settlement that fairly reflects each party’s expected outcome in litigation.” *See Munday v. Navy Fed. Credit Union*, 2016 WL 7655807, at *9 (C.D. Cal. Sept. 15, 2016) (Staton, J.) Accordingly, Class Counsel’s endorsement also weighs in favor of approving the settlement.

G. Reaction of Class members to Proposed Settlement

Sarabia has not provided evidence of Class members’ reactions to the proposed settlement. However, the Court recognizes that the lack of such evidence is not uncommon at the preliminary approval stage. Before the final fairness hearing, Class Counsel shall submit a sufficient number of declarations from Class members discussing their reactions to the proposed settlement.

H. Signs of Collusion

The Court finds no sign, explicit or subtle, of collusion between the parties. Of course, before final approval, the court will “scrutinize closely the relationship between attorneys’ fees and benefit to the class” and will not “award unreasonably high fees simply because they are uncontested.” *In re Bluetooth*, 654 F.3d at 948 (cleaned up). The Court will also ultimately determine whether the requested amounts of service payments are justified by the circumstances of this case. Notably, unawarded amounts will revert to the net settlement fund for the benefit of the settlement class.

Considering all of the factors together, the Court preliminarily concludes that the settlement is fair, reasonable, and adequate.

IV. APPROVAL OF THE PROPOSED SETTLEMENT ADMINISTRATOR

The parties agreed to appoint Simpluris as the settlement administrator in this

action, subject to the Court's approval. (Mem. at 8.) Sarabia has provided sufficient documentation of Simpluris's competence in carrying out the duties of a settlement administrator. (Springer Decl., Doc. 77-2.) Moreover, this Court and others in this circuit have approved Simpluris as the settlement administrator in other class action settlements. *See Palmer v. Pier 1 Imports, Inc.*, 2018 WL 6133692, at *10 (C.D. Cal. Jan. 9, 2018) (appointing Simpluris); *Eddings v. Health Net, Inc.*, 2013 WL 169895, at *7 n.4 (C.D. Cal. Jan. 16, 2013) (same); *Monterrubio v. Best Buy Stores, L.P.*, 291 F.R.D. 443, 453 (E.D. Cal. 2013) (same). Accordingly, the Court approves Simpluris as the settlement administrator in this action.

V. **PRELIMINARY APPROVAL OF CLASS NOTICE FORM AND METHOD**

For a class certified under Rule 23(b)(3), "the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). However, actual notice is not required. *See Silber v. Mabon*, 18 F.3d 1449, 1454 (9th Cir. 1994).

Pursuant to the settlement, within ten days of the Court's preliminary approval of the settlement Defendants will provide the settlement administrator with the following information about each Class member: his or her name, social security number, last known address, last known telephone number, dates of employment, and data to determine the number of weeks worked by the Class member. (Settlement Agreement § III.J.2.a; Springer Decl. ¶ 9.) Within seven days of receiving Class members' data from Defendants, the settlement administrator will mail the Class Notice by first-class regular mail. (Settlement Agreement § III.J.2.b.) The settlement administrator will process and update the mailing addresses contained in the Employee List utilizing the National Change of Address Database ("NCOA") maintained by the U.S. Postal Service. (Springer Decl.

¶ 10.) If a Notice is returned as undeliverable and without a forwarding address, the settlement administrator will perform a “skiptrace” search to obtain an updated address. (*Id.* ¶ 11.) Generally, Class members will have forty-five days from the initial mailing of the Class Notice to seek exclusion from the settlement or object to its terms. (Settlement Agreement § III.J.4.) The Supreme Court has found notice by mail to be sufficient if the notice is “reasonably calculated ... to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); accord *Sullivan v. Am. Express Publ’g Corp.*, 2011 WL 2600702 at *8 (C.D. Cal. June 30, 2011) (quoting *Mullane*). The Court finds that the proposed procedure for Class Notice satisfies this standard.

Sarabia has provided the Court with a copy of the proposed Notice. (Amended Class Notice, Doc. 77-5.) Under Rule 23, the notice must include, in a manner that is understandable to potential class members: “(i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).” Fed. R. Civ. P. 23(c)(2)(B). The proposed Notice includes all of this necessary information. (*See* Amended Class Notice.) Accordingly, the Court approves the form and method of Class Notice.

The Court requires that any motion for attorneys’ fees, costs, and service payments be filed with the Court **no later than 15 days before** the exclusion deadline. Sarabia shall file his motion for final approval **no later than March 3, 2023**, including a brief responding to any submitted objections and otherwise summarizing the Class members’ participation in the settlement and the settlement administration to date.

Finally, the Court notes that its jurisdiction over this matter arises in part from the Class Action Fairness Act. (*See* Notice of Removal.) In their papers for final approval of

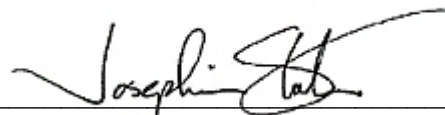
the settlement, the parties must also include a declaration reflecting that they provided appropriate notice of the proposed settlement to relevant state and federal authorities per the terms of 28 U.S.C. § 1715(b) at least 90 days prior to the date for the final fairness hearing. 28 U.S.C. § 1715(d). *True v. Am. Honda Motor Co.*, 749 F. Supp. 2d 1052, 1059 n.5 (C.D. Cal. 2010) (recognizing that the Class Action Fairness Act “requires that notice [of a proposed settlement] be sent to ‘the appropriate State official of each State in which a class member resides and the appropriate Federal official.’” (quoting 28 U.S.C § 1715(b))).

VI. CONCLUSION

For the reasons discussed above, the Court (1) conditionally certifies the class for settlement purposes only, (2) preliminarily approves the settlement, (3) names Mario Sarabia as Class Representative, (4) names Stan Mallison, Hector Martinez, Heather Hamilton, and Farrah Mirabel as Class Counsel, (5) approves Simpluris as the settlement administrator, and (6) approves the form and method of Class Notice.

The Court sets a final fairness hearing for **March 24, 2023 at 10:30 a.m.** to determine whether the settlement should be finally approved as fair, reasonable, and adequate to the Class members. Sarabia shall file his motion for final **approval no later than March 3, 2023**. Class Counsel shall file any supplemental brief in support of their application for fees and costs **no later than 15 days before the exclusion deadline**. The Court reserves the right to continue the date of the final fairness hearing without further notice to Class members.

DATED: October 11, 2022



HON. JOSEPHINE L. STATON
UNITED STATES DISTRICT JUDGE