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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LEEANN BRUTOUT, individually, and
on behalf of all others similarly situated,

Plaintiff,

vs.

MAP COMMUNICATIONS, INC., a
Delaware corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No.: 3:21-cv-01533-TWR-AGS

CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT AND
CERTIFICATION OF SETTLEMENT
CLASS; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Date: April 20, 2023
Time: 2:00 p.m.
Courtroom: 3A
Judge: Hon. Todd W. Robinson

Action Filed: July 21, 2021
Action Removed: August 30, 2021
Trial Date: Not set

1 TO THE COURT, TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on April 20, 2023, at 2:00 p.m., in Courtroom 3A of
3 the above-entitled Court, located at 221 West Broadway, San Diego, CA 92101, Plaintiff
4 LEEANN BRUTOUT (“Plaintiff”) will and hereby does move the Court for an order
5 granting preliminary approval of the CLASS ACTION AND PAGA SETTLEMENT
6 AGREEMENT AND CLASS NOTICE (“Settlement” or “Agreement” herein) reached
7 with Defendant MAP COMMUNICATIONS, INC. (“Defendant” or “MAP”), a true and
8 correct copy of which is attached as Exhibit 1 to the Declaration of H. Scott Leviant
9 submitted herewith. Specifically, Plaintiff moves for an order to:

- 10 1. grant preliminary approval of the terms of the Agreement as fair,
11 reasonable and adequate under Rule 23(e) of the Federal Rules of Civil Procedure,
12 including the amount of the settlement; the amount of distributions to class
13 members; the procedure for giving notice to class members; the procedure for
14 opting out of the settlement; and the amounts allocated to the service payment and
15 attorney’s fees and costs;
- 16 2. preliminarily certify for settlement purposes the Settlement Class
17 described in the Agreement;
- 18 3. appoint Plaintiff as representative for the Settlement Class;
- 19 4. appoint Moon & Yang, APC as counsel for the Settlement Class;
- 20 5. approve the use of Phoenix Settlement Administrators as the settlement
21 administrator;
- 22 6. direct that notice issue to members of the Settlement Class as provided in
23 the Agreement; and,
- 24 7. schedule a final approval and fairness hearing on a date approximately
25 145 days after preliminary approval (Thursday, September 14, 2023 is proposed,
26 assuming a preliminary approval order issues shortly after April 20, 2023) to
27 consider whether the Agreement should be finally approved as fair, reasonable and
28

adequate under Rule 23(e) of the Federal Rules of Civil Procedure and to rule on the motion for attorney's fees, costs and service payments submitted by Plaintiffs.

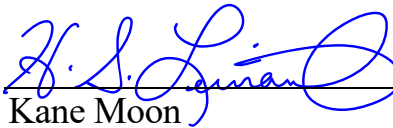
Plaintiff's motion is based on this Notice, the following Memorandum of Points and Authorities, the Declarations of counsel, Plaintiff, and the Settlement Administrator submitted herewith, all other pleadings and papers on file in this action, and any oral argument or other matter that may be considered by the Court.

NOTE: The Parties have conferred extensively about this Motion, and it is not opposed. Rather, the Motion is required as part of the Parties' proposed Settlement.

Respectfully submitted,

Dated: March 8, 2023

MOON & YANG, APC

By: 
Kane Moon
H. Scott Leviant
Mariam Ghazaryan

Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This is a putative wage and hour class action on behalf of non-exempt employees
4 employed by Defendant at any time from July 21, 2017 to December 31, 2022. The core
5 issues in the case were based on allegations by named Plaintiff LEEANN BRUTOUT
6 (“Plaintiff”) that Defendant did not provide legally compliant meal periods and rest breaks,
7 did not reimburse employees for business expenses, did not compensate employees for all
8 time worked, and, as a result, wage statements provided to employees were rendered
9 inaccurate, final wages were not timely paid, and the conduct violated the California
10 Private Attorneys General Act of 2004 (“PAGA”) and the Unfair Competition Law
11 (“UCL”). Defendant disputes these claims.

12 The case was thoroughly investigated by all Parties. Following the production of
13 policy documents, time records, and pay data, and vigorous negotiation at mediation,
14 Plaintiff and Defendant (Plaintiff and Defendant collectively referred to herein as the
15 “Parties”) reached a proposed class action settlement valued at **\$380,000.00** for
16 approximately 760 putative class members.¹

17 The Parties believe the Settlement to be fair and reasonable, to adequately reflect the
18 potential liability and substantial risks in this matter, and to be the result of thorough
19 factual and legal analyses and arms-length negotiations. Through this Motion, Plaintiff
20 requests certification of a Settlement Class pursuant to Fed. R. Civ. P. 23 and preliminary
21 approval of the proposed class action settlement.

22 **II. SUMMARY OF SETTLEMENT TERMS**

23 The full terms of the settlement are set forth in the Stipulation. The primary
24 material terms are as follows:

25 The provisions of the proposed Settlement include the following:
26 _____

27 ¹ Many hundreds of Class Members worked for less than a month, and will receive a
28 comparatively tiny portion of the Net Settlement Amount. As such, the “average” gross
 payment is misleadingly small, and longterm employees will receive substantially more.

- (a) Defendant agrees not to oppose certification for purposes of Settlement (Settlement, ¶ 12.1);
- (b) Class: All persons employed by MAP in California and classified as non-exempt employees who worked for MAP during the Class Period (the “Class Period” is July 21, 2017 to December 31, 2022). (Settlement, ¶ 1.5, 1.12.) “Participating Class Members” are those Class Members who do not submit timely exclusion requests to the Settlement Administrator. (Settlement, ¶ 1.9, 1.35);
- (c) Settlement Amount: Defendant will pay a maximum of **\$380,000.00**, referred to as the Gross Settlement Amount (or GSA herein), resulting in an estimated average **gross** payment per Class Member of approximately **\$500.00** (Settlement, ¶ 1.22);
- (d) Class Size: approximately **760** individuals who worked an approximately **33,500** workweeks. (Settlement, ¶¶ 4.1, 8);
- (e) PAGA Group Size: Aggrieved Employees worked roughly **7,750** pay periods. (Settlement, ¶¶ 4.1; Leviant Decl., ¶ 18.)
- (f) PAGA Period: July 17, 2020 to December 31, 2022. (Settlement, ¶ 1.31);
- (g) Data Sampling: Time and pay records for a random sample of putative class members was provided, with a margin of error for extrapolations calculated to be 7.95%, based on the sample size. (Leviant Decl., ¶ 6.)
- (h) Valuation Analysis: Plaintiff addresses the claims analysis herein, at Part V.B.3, and in more detail the Declaration of Leviant, at Paragraph 18;
- (i) No Reversion: The Settlement is a ***non-reversionary*** settlement (Settlement, ¶ 3.1);
- (j) Certification: Plaintiff addresses certification requisites herein, at Part

- V.A., and in the Declaration of Leviant, at Paragraphs 34-40;
- (k) No Claim Form: No claim form is required (Settlement, ¶ 3.1);
- (l) Class Release: The Settlement will release specified wage-and-hour claims for Participating Class Members (those Class Members who do not opt out of the Settlement) asserted in the Action (Settlement, ¶¶ 2.1, 5.2);
- (m) PAGA Release: Class Members will release the PAGA Claims that were alleged, or reasonably could have been alleged, based on the same factual predicate as the claims stated in the Action and Plaintiff's LWDA Notice Letter, regardless of whether they opt out of the class portion of the Settlement (Settlement, ¶¶ 2.1, 5.3);
- (n) Release Effective Date: The Release is not active until Defendant tenders all payments required under the Settlement to the Settlement Administrator (Settlement, ¶ 5);
- (o) Net Settlement Amount Available to the Class: After deducting Class Counsel's attorneys' fees and costs, service payment to Plaintiff, administration costs, and the PAGA penalty, the remainder will be available for distribution to Class Members who do not opt out, with each Class Member receiving a share based on the number of workweeks each Class Member worked for Defendant within the Class Period. The Net Settlement Amount is estimated to be at least **\$167,833.33**, resulting in an average **net** payment per Class Member of at least **\$220.83**, before any tax withholdings. (Settlement, ¶ 1.28);
- (p) Tax Allocation: The amounts distributed to Class Members will be characterized as 25% alleged unpaid wages, 75% to penalties and interest, and PAGA Settlement Payments will be allocated as 100% penalties. (Settlement, ¶ 3.2.4.1, 3.2.5.2.) After performing a current value analysis based on the risk facing each claim, the exposure

analysis shows that 88.24% of the exposure is attributable to penalties. Here, the allocation of 25% to wages is both supportable and conservative. (Leviant Decl., ¶ 18.)

- (q) Employer's Portion of Payroll Taxes Paid Separately: Defendant's portion of payroll taxes (e.g., FICA, FUTA, etc.) owed on any settlement payments to Class Members that constitute wages will be paid separate and apart from the GSM (Settlement, ¶ 3.1);
- (r) Settlement Administrator: The notice portion of the Settlement will be administered by a third-party Administrator, Phoenix Settlement Administrators, in an amount not to exceed \$18,000.00, and the Parties accepted Phoenix Settlement Administrators' bid for settlement administration services in the amount of **\$10,000.00**. (Settlement, ¶ 3.2.3; Moore Decl., ¶ 9 and Exh. B.)
- (s) Class Data for Administration: The Settlement Administrator will receive the Class List within 14 calendar days of Preliminary Approval, use the NCOA database to update the Class List, and then use skip tracing on returned Notices (Settlement, ¶ 4.2);
- (t) Notice: The Notice will issue within 14 days of receipt of the Class List (Settlement, ¶ 7.4.2). The Notice describes how to dispute workweeks, submit an objection in writing, in person, or through an attorney, or request exclusion (Settlement, ¶¶ 7.4 – 7.7);
- (u) Notice Language: Notice will issue in English only, as all Class Members were required to speak English (Settlement, ¶ 1.11);
- (v) Objections: Objections can be submitted in person, through an attorney, or in writing to the Settlement Administrator, with no pre-requisite to being heard (Settlement, ¶ 7.7);
- (w) Exclusion Requests: The procedure for exclusion requests, mailing a request to the Settlement Administrator, is the same as the procedure

for submitting a written objection (Settlement, ¶¶ 7.5 and 7.7);

- (x) PAGA Allocation: From the GSA, **\$40,000** will be allocated to settle claims brought pursuant to the California Private Attorneys General Act, Labor Code § 2699 *et seq.* (“PAGA”), and seventy-five percent (75%), or **\$30,000**, will be paid to the California Labor & Workforce Development Agency. (Settlement, ¶¶ 1.34, 3.2.5);
- (y) Notice to LWDA: Notice was provided prior to the filing of this Motion. Evidence is attached to the Leviant Declaration;
- (z) Enhancement/Service Awards to Plaintiff: Defendant will not oppose the application for Class Representative Service Payments of up to **\$7,500.00** for Plaintiff, to be paid from the GSA. (Settlement, ¶ 3.2.1);
- (aa) Fees and Costs: Defendant will not oppose Class Counsel’s application for fees not to exceed 33 1/3% of the GSA (**\$126,666.67**), and actual costs, in an amount not to exceed **\$20,000**, to be paid out of the GSA (Settlement, ¶ 3.2.2);
- (bb) Check Void Period: Settlement checks will be valid for 180 days (Settlement, ¶ 4.4.1);
- (cc) Uncashed Checks: Any settlement checks that are mailed to the Class Members and remain uncashed after 180 days of the date of issuance will be cancelled, and the moneys will be directed to the California Controller’s Unclaimed Property Fund (Settlement, ¶ 4.4.3);
- (dd) Judgment Notice: Judgment will be posted on the Settlement Administrator’s website after entry (Settlement, ¶ 7.8.1);
- (ee) Confidentiality Provisions: The Settlement permits Class Counsel to discuss the Settlement with Class Members (Settlement ¶ 12.2).

(Leviant Decl., ¶ 11.) A true and correct copy of the CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE is attached thereto as Exhibit “1.”

1 **III. BACKGROUND**

2 **A. Plaintiff's Claims**

3 On July 21, 2021, Plaintiff commenced this Action by filing a Complaint alleging
4 causes of action against MAP, alleging that MAP (1) failed to provide meal periods (Lab.
5 Code §§ 204, 223, 226.7, 512 and 1198 and Wage Order); (2) failed to provide rest periods
6 (Lab. Code §§ 204, 223, 226.7 and 1198 and Wage Order); (3) failed to pay minimum and
7 overtime time wages (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1997.1 and 1198 and
8 Wage Order as to minimum wage); (4) failed to provide accurate itemized wage
9 statements (Lab. Code §§ 226(a)); (5) failed to timely pay all final wages (Lab. Code §§
10 201, 202 and 203); (6) failed to indemnify for job-related expenses (Lab. Code § 2802);
11 and, (7) engaged in Unfair Competition (Bus. & Prof. Code §§ 17200 et seq.). In
12 conjunction with a Motion for Preliminary Approval, Plaintiff will seek leave to file a First
13 Amended Complaint alleging an additional claim for relief against MAP for violation of
14 PAGA. The First Amended Complaint will be the operative complaint in the Action for
15 purposes of settlement (the “Operative Complaint.”). (Declaration of H. Scott Leviant
16 [“Leviant Decl.”], at ¶ 4.)

17 Pursuant to Labor Code § 2699.3(a), Plaintiff gave timely written notice to MAP
18 and the LWDA by sending the PAGA Notice. (Leviant Decl., at ¶ 5.)

19 **B. Pre-Mediation Data Production and Analysis**

20 The Parties have conducted significant investigation of the facts and law during the
21 prosecution of this Litigation. (Leviant Decl., at ¶ 6.) Such investigation has included
22 informal written discovery; the pre-mediation exchange of information and voluminous
23 data; and, numerous communications between the Parties. (*Id.*) The Parties have further
24 investigated the applicable law as applied to the alleged claims of Plaintiff and potential
25 defenses thereto, and the damages claimed by Plaintiffs. (*Id.*)

26 After reviewing documents regarding Defendant’s wage and hour policies and
27 practices and other information obtained during the informal exchange of discovery, Class
28 Counsel were able to evaluate the probability of class certification, success on the merits,

1 and the reasonably obtainable maximum monetary exposure for all claims. Class Counsel
2 reviewed these records and prepared a damage analysis prior to mediation. Class Counsel
3 also investigated the applicable law regarding the claims and defenses asserted in the
4 litigation. (Leviant Decl., at ¶ 7.)

5 **C. Settlement**

6 On June 21, 2022, the Parties participated in an all-day mediation presided over by
7 experienced mediator Steve Serratore, Esq., a well-regarded mediator who has mediated
8 many wage and hour class actions. (Leviant Decl., ¶ 8.) At the mediation, the Parties
9 discussed at length the burdens and risks of continuing with the litigation as well as the
10 merits of the claims and defenses. (*Id.*) The Action did not settle at that time. (*Id.*) The
11 Parties continued to review data produced for mediation and exchange analyses of
12 potential exposure in the Action. (*Id.*) In subsequent discussions, a settlement was reached
13 in this matter, based on a review of exposure analysis data exchanged by the Parties, and a
14 long form settlement agreement was drafted by the Parties (the Agreement). (*Id.*)

15 Plaintiff and Class Counsel are aware of the burdens of proof necessary to establish
16 liability for the claims asserted in the Action, both generally and in response to
17 Defendant's defenses thereto. (Leviant Decl., ¶ 9.) Plaintiff and Class Counsel have also
18 taken into account Defendant's agreement to enter into a Settlement that confers
19 substantial relief upon the Class.

20 Based on the foregoing, Plaintiff and Class Counsel have determined that the
21 Settlement set forth in this Agreement is a fair, adequate, and reasonable Settlement and is
22 in the best interests of the Class. (Leviant Decl., ¶ 10.) Solely for the purpose of settling
23 this case, the Parties stipulate to class certification. (*Id.*) If this Settlement is not approved
24 by the Court for any reason, Defendant reserves its rights to contest class certification.
25 (*Id.*) This Settlement, if approved by the Court, will result in the termination with
26 prejudice of the litigation through the entry of the Judgment and the release of all Released
27 Claims for all Class Members, including all within the class definition who have not
28 elected to exclude themselves from the Class. (*Id.*)

1 **IV. CLASS DEFINITION**

2 The Class is defined as follows:

3 All persons employed by MAP in California and classified as non-exempt
4 employees who worked for MAP during the Class Period, (the “Class
5 Period” is July 21, 2017 to December 31, 2022). (Settlement, ¶¶ 1.5,
6 1.12.)

7 (Leviant Decl., ¶ 34 and Exhibit 1.)

8 **V. THE SETTLEMENT MERITS PRELIMINARY APPROVAL**

9 The law favors settlement, particularly in class actions and other complex cases,
10 where substantial resources can be conserved by avoiding the time, cost, and the rigors of
11 formal litigation. *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976).
12 These concerns apply in a case such as this, where allegedly wrongful practices potentially
13 affected numerous employees, in relatively small amounts.

14 Any settlement of class litigation must be reviewed and approved by the court. This
15 is done in two steps: (1) an early (preliminary) review by the court, and (2) a final review
16 after notice has been distributed to the class for their comment or objections. The *Manual*
17 *for Complex Litigation Second* states at § 30.44 (1985):

18 A two-step process is followed when considering class settlements ... if
19 the proposed settlement appears to be the product of serious, informed,
20 non-collusive negotiations, has no obvious deficiencies, does not
21 improperly grant preferential treatment to class representatives or
22 segments of the class, and falls within the range of possible approval, then
23 the court should direct that notice be given to the class members of a
24 formal fairness hearing, at which evidence may be presented in support of
25 and in opposition to the settlement.

26 When parties reach a settlement agreement prior to class certification, “courts must peruse
27 the proposed compromise to ratify both the propriety of the certification and the fairness of
28 the settlement.” *Acosta v. Trans Union LLC*, 243 F.R.D. 377, 383 (C.D. Cal. 2007).

1 “The first step is a preliminary, pre-notification hearing to determine whether the
2 proposed settlement is ‘within the range of possible approval.’ This hearing is not a
3 fairness hearing; its purpose, rather is to ascertain whether there is any reason to notify the
4 class members of the proposed settlement and to proceed with a fairness hearing.”
5 *Armstrong v. Board of School Directors of the City of Milwaukee*, 616 F.2d 305, 314 (6th
6 Cir. 1980) [quoting Manual for Complex Litigation s 1.46, at 53-55 (West 1977)]. “[T]he
7 district court must assess whether a class exists,” *Staton v. Boeing Co.*, 327 F.3d 938, 952
8 (9th Cir. 2003), *i.e.*, whether the lawsuit qualifies as a class action under Rule 23. *See*,
9 *e.g.*, *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1022 (9th Cir. 1998) (reviewing settlement
10 to ensure compliance with requirements of Rule 23(a) and Rule 23(b)(3)).

11 At the second stage of the approval process, after class members have had an
12 opportunity to object to the settlement, the court makes a final determination whether the
13 settlement is “fair, reasonable and adequate” under Rule 23(e). *Armstrong*, 616 F.2d at
14 314; *see Staton*, 327 F.3d at 952; *see also* Rule 23(e)(C)(1), which provides that a court
15 may finally approve a settlement of a class action if it finds after a hearing that the
16 settlement is “fair, reasonable, and adequate” and Rule 23(e)(C)(4), which provides that
17 any class member may object to a proposed settlement.

18 **A. Plaintiff’s Claims Merit Class Action Treatment for Settlement Purposes**

19 At the preliminary approval stage, a plaintiff need only make a “prima facie
20 showing” of the requirements of Rule 23.² In determining the propriety of class
21 certification, a court may not delve into the underlying merits of the claims. The
22 fundamental question “is not whether . . . plaintiffs have stated a cause of action or will
23 prevail on the merits, but rather whether the requirements of Rule 23 are met.” *Eisen v.*
24 *Carlisle & Jacquelin*, 417 U.S. 156, 178 (1974).

25 The Ninth Circuit has established that, when ruling on the propriety of class
26

27 ² *See*, Schwarzer, Tashima & Wagstaffe, Cal. Prac. Guide: Fed. Civ. Pro. Before Trial
28 § 10:573 (The Rutter Group 2006).

1 certification, a district court “is bound to take the substantive allegations of the complaint
2 as true.” *Blackie v. Barrack*, 524 F.2d 891, 901 n.17 (9th Cir. 1975). A court “may not
3 require plaintiffs to make a preliminary proof of their claim; it requires only sufficient
4 information to form a reasonable judgment.” *Baldwin & Flynn v. Nat’l. Safety Associates*,
5 149 F.R.D. 598, 600 (N.D. Cal. 1993). Under these standards, this action meets the
6 requirements for certification under Rule 23(a) and Rule 23(b)(3).

7 **1. Numerosity**

8 Under Rule 23(a)(1), a class action may be maintained where “the class is so
9 numerous that joinder of all members is impracticable.” In determining whether joinder
10 would be impracticable, a court may consider not only the sheer number of class members,
11 *Riordan v. Smith Barney*, 113 F.R.D. 60, 62 (N.D. Ill. 1986) (numbers alone may be
12 dispositive), but also “the nature of the action, the size of the individual claims, [and] the
13 inconvenience of trying individual suits.” *Wang v. Chinese Daily News*, 231 F.R.D. 602,
14 606 (C.D. Cal. 2005). “A class action may proceed upon estimates as to the size of the
15 proposed class.” *Lewis v. Gross*, 663 F. Supp. 1164, 1169 (E.D.N.Y. 1986). *See also, In*
16 *re Computer Memories Sec. Litig.*, 111 F.R.D. 675, 679 (N.D. Cal. 1986) (class certified
17 where plaintiffs did not establish exact size, but demonstrated that class would “obviously
18 be sufficiently numerous”).

19 In this action, the Class is composed of approximately 760 individuals. (Levant
20 Decl., ¶ 35.) It is sufficiently numerous that the individual joinder of all members is
21 impracticable.

22 **2. Commonality and Predominance of Common Issues**

23 Rule 23(a)(2) requires that there be “questions of law or fact common to the class.”
24 This commonality requirement is “construed permissively.” *Hanlon v. Chrysler Corp.*,
25 150 F.3d 1011, 1019 (9th Cir. 1998). Plaintiff need not demonstrate that all questions of
26 fact and law are common. “The existence of shared legal issues with divergent factual
27 predicates is sufficient.” *Id.* Where a class is united by a common interest in determining
28 whether a defendant’s broad course of conduct is actionable, commonality is not defeated

1 “by slight differences in class members’ positions.” *Blackie*, 524 F.2d at 901 n.17.

2 In this litigation, all Class Members have shared a common interest in determining:
3 whether Defendant provided legally compliant meal periods and rest breaks to Class
4 Members; whether Defendant paid employees for all time worked; whether Defendant
5 violated the itemized wage statement provisions of Labor Code § 226 by not providing
6 accurate information as to wages; and whether Defendant’s policies and practices violated
7 California Business & Professions Code §§ 17200 *et seq.*

8 Given the permissive standard that courts in the Ninth Circuit employ when
9 determining commonality, certification of the Class for settlement purposes is appropriate
10 as Rule 23(a)(2) is satisfied.

11 Once it is established that common issues of law or fact exist, for Rule 23(b)(3)
12 purposes, the Court next examines whether those common issues predominate. The
13 predominance inquiry focuses on whether the class is “sufficiently cohesive to warrant
14 adjudication by representation.” *Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*,
15 244 F.3d 1152, 1162 (9th Cir. 2001). Central to predominance is “the notion that the
16 adjudication of common issues will help achieve judicial economy.” *Zinser v. Accufix*
17 *Research Institute, Inc.*, 253 F.3d 1188, 1189 (9th Cir. 2001). When common questions
18 represent a significant aspect of the case and they can be resolved for all members of the
19 class in a single adjudication, there is clear justification for handling the dispute on a
20 representative rather than on an individual basis.” *Hanlon*, 150 F.3d at 1022. It is well
21 settled that the need for determining differing amounts of damages suffered by different
22 class members does not preclude class certification. *See, Blackie*, 524 F.2d at 905; *Wang*,
23 231 F.R.D. at 613.

24 There are common issues that may predominate over individual issues in this
25 litigation. For example: (1) whether Defendant uniformly failed to provide Class
26 Members with legally compliant meal periods and rest breaks; (2) whether Defendant
27 required or permitted employees to work off the clock; (3) whether Defendant provided
28 putative Class Members with itemized wage statements that were inaccurate in violation of

1 Labor Code § 226; and (4) whether Defendant failed to pay all overtime wages due and
2 payable to former employees within the times specified under the California Labor Code.

3 3. Typicality

4 Rule 23(a)(3) requires that the representative plaintiff have claims “typical of the
5 claims . . . of the class.” This factor is also construed permissively. *See Hanlon*, 150 F.3d
6 at 1019-20. Representative claims are typical “if they are reasonably co-extensive with
7 those of absent class members; they need not be identical.” *Id.* at 1020. In other words,
8 named plaintiffs need not be “identically situated” with all other class members. “It is
9 enough if their situations share a common issue of law or fact and are sufficiently parallel
10 to insure a vigorous and full presentation of all claims for relief.” *Cal. Rural Legal*
11 *Assistance, Inc. v. Legal Servs. Corp.*, 917 F.2d 1171, 1175 (9th Cir. 1990).

12 Typicality refers to the “nature of the claim . . . of the class representative, and not
13 to the specific facts from which it arose.” *Hanon v. Dataproducts Corp.*, 976 F.2d 497,
14 508 (9th Cir. 1992). The typicality requirement is satisfied where “the named Plaintiffs
15 raise the same Labor Code violations as other putative class members.” *Id.* Here, Plaintiff
16 is raising the same claims as the putative class members. (Leviant Decl., ¶ 36; Declaration
17 of Brutout, ¶¶ 2-11.)

18 4. Adequate Representation

19 Rule 23(a)(4) requires that “the representative parties will fairly and adequately
20 protect the interests of the class.” Adequate representation turns on whether the named
21 plaintiff and his counsel “have any conflicts of interest with other class members,” and
22 whether the named plaintiff and his counsel will “prosecute the action vigorously on behalf
23 of the class.” Adequacy may be established by the mere fact that counsel are experienced
24 practitioners. *Hanlon*, 150 F.3d at 1020.

25 There are no conflicts of interest between Plaintiff and Class Members, and Plaintiff
26 has shown and expressed a willingness to represent Class Members. (Declaration of
27 Brutout, ¶¶ 5-11.) The similarity of the claims asserted and remedies sought by Class
28 Members and Plaintiff do not suggest any divergent interests held by Plaintiff. Defendant

1 did not assert unique defenses against Plaintiff that it could not assert against any other
2 Class Member. Also, there are no conflicts with Plaintiff's counsel.

3 Plaintiff's counsel have substantial class action experience and can adequately
4 represent the Class. They have been appointed class counsel in many wage and hour class
5 actions against major employers. (Leviant Decl., ¶¶ 21-26.)

6 **5. Superiority**

7 In deciding whether to certify a class for settlement purposes, a court considers the
8 following factors to determine whether a class action is superior: (a) class members'
9 interests in individually controlling the prosecution or defense of separate actions; (b) the
10 extent and nature of any litigation concerning the controversy already commenced by or
11 against members of the class; and (c) the desirability or undesirability of concentrating the
12 litigation of the claims in the particular forum.³ Some courts have found that the third
13 Rule 23(b)(3) factor is "conceptually irrelevant in the context of a settlement." See *Strube*
14 *v. American Equity Inv. Life Ins. Co.*, 226 F.R.D. 688, 697 (M.D. Fla. 2005). "With the
15 settlement in hand, the desirability of concentrating the litigation in one forum is obvious."
16 *Elkins v. Equitable Life Ins. Of Iowa*, 1998 WL 133747, at *19 (M.D. Fla. 1998).

17 To determine whether the superiority element of Rule 23(b)(3) is satisfied, a court
18 compares a class action with alternative methods for adjudicating the parties' claims. Lack
19 of a viable alternative to a class action necessarily means that it satisfies the superiority
20 requirement. See *Valentino v. Carter-Wallace*, 97 F.3d 1227, 1235-36 (9th Cir. 1996) ("a
21 class action is a superior method for managing litigation if no realistic alternative exists").
22 "[I]f a comparable evaluation of other procedures reveals no other realistic possibilities,
23 [the] superiority portion of Rule 23(b)(3) has been satisfied." *Culinary/Bartender Trust*
24 *Fund*, 244 F.3d at 1163. In *Culinary/ Bartender Trust Fund*, the Ninth Circuit held that
25

26 ³ Rule 23(b)(3)(A)-(C). When a court reviews a class action settlement, it does *not*
27 consider Rule 23(b)(3)(D), the fourth factor, regarding difficulties of managing a class
28 action. *Amchem Products Inc. v. Woodward* (1997) 521 U.S. 591, 620 (in deciding
whether to certify a class for settlement purposes, a district court "need not inquire
whether the case, if tried, would present intractable management problems").

1 the “case involve[d] multiple claims for relatively small sums” and that the class action
2 clearly served as the only method that would ““permit the plaintiffs to pool claims which
3 would be uneconomical to litigate individually.”” *Id.* at 1163. The class action is superior
4 here as it is on the only method that will allow Class Members “to pool [their individual]
5 claims which would be uneconomical to litigate individually.” *Id.*

6 The factors articulated in Rule 23(b)(3)(A), (B) and (C) also favor class
7 certification. It is difficult to believe that any Class Members have an interest in
8 individually controlling the prosecution of separate actions, given the relatively small sums
9 involved for any one Class Member. Any Class Member who wants to pursue a separate
10 action can opt out of the Settlement.

11 Also, it is desirable to concentrate the issues in this forum. The Settlement allows
12 all individuals to resolve similar claims against Defendant through a process that does not
13 even require the submission of a claim form.

14 **B. At This Stage, Plaintiff Need Only Establish That the Settlement Falls**
15 **Within the Range of Reasonableness**

16 No single criterion determines whether a class action settlement meets the
17 requirements of Rule 23(e). The Ninth Circuit has directed district courts to consider a
18 variety of factors without providing an “exhaustive list” or suggesting which factors are
19 most important. *See, Staton*, 327 F.3d at 959. “The relative degree of importance to be
20 attached to any particular factor will depend upon and be dictated by the nature of the
21 claim(s) advanced, the type(s) of relief sought, and the unique facts and circumstances
22 presented by each individual case.” *Officers for Justice v. Civil Service Commission of*
23 *City and County of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982).

24 Due to the impossibility of predicting any litigation result with certainty, a district
25 court’s evaluation of a settlement essentially amounts to ““an amalgam of delicate
26 balancing, gross approximations and rough justice.”” *Id.* at 625. The ultimate touchstone,
27 however, is whether “class counsel adequately pursued the interests of the class as a
28 whole.” *Staton*, 327 F.3d at 961.

1 As the Ninth Circuit explained in *Officers for Justice*, the district court’s role in
2 evaluating a class action settlement is therefore tailored to meet that narrow objective.
3 *Officers for Justice*, 688 F.2d at 625. Review under Rule 23(e) “must be limited to the
4 extent necessary to reach a reasoned judgment that the agreement is not the product of
5 fraud or overreaching by, or collusion between, the negotiating parties.” *Id.* Accordingly,
6 the Ninth Circuit will not reverse a district court’s approval of a class action settlement
7 “unless the fees and relief provisions clearly suggest the possibility that class interests gave
8 way to self interest.” *Staton*, 327 F.3d at 961.

9 There is a presumption that the negotiations were conducted in good faith.
10 Newberg, §11.51; *Pridd v. Edelman*, 883 F.2d 438, 447 (6th Circuit 1989); *Mars Steel*
11 *Corp. v. Continental Illinois National Bank and Trust Co.*, 834 F.2d 677, 682 (7th Cir.
12 1987). Courts do not substitute their judgment for that of the proponents, particularly
13 where, as here, settlement has been reached with the participation of experienced counsel
14 familiar with the litigation. *Hammon v. Barry*, 752 F. Supp. 1087 (D.D.C. 1990); *In re*
15 *Armored Car Anti-Trust Litigation*, 472 F. Supp. 1357 (N.D. GA 1979); *Sommers v.*
16 *Abraham Lincoln Federal Savings & Loan Association*, 79 F.R.D. 571 (E.D. PA 1978).
17 The fact that settlement results from arms-length negotiations following “relevant
18 discovery” creates “a presumption that the agreement is fair.” *Linney v. Cellular Alaska*
19 *Partnership*, 1997 WL 450064, *5 (N.D. Cal. 1997); *See In re Immune Response*
20 *Securities Litigation*, 497 F. Supp. 2d 1166, 1174 (S.D. Cal. 2007) (settlement approved
21 where informal discovery gave parties clear view of strengths and weaknesses of cases).

22 Here, the Parties reached a non-collusive settlement after discovery and extended
23 negotiations. The settlement was finally reached after a day of arm’s length negotiations
24 before Steve Serratore, a highly-respected mediator, and subsequent negotiations.
25 Obtaining class certification and establishing liability posed significant hurdles for the
26 class that justified the settlement. The Stipulation falls within the range of reasonable
27 outcomes and merits approval under Rule 23(e). (Leviant Decl., ¶¶ 8-9, 11, 13-20.)
28

1 **1. The Value of the Settlement to Class Members Is Fair, Reasonable**
2 **and Adequate**

3 The Parties reached a Settlement in good faith after negotiating at arm's length with
4 a professional mediator. (Leviant Decl., ¶ 8.) Settlement occurred only after discovery
5 commenced and additional information was shared prior to mediation (including detailed
6 time records for a sample of putative class members). The information produced in
7 discovery, and the additional data about class composition produced for mediation, were
8 sufficient to permit Plaintiff's counsel to adequately evaluate the settlement. And, notably,
9 approval of a class action settlement does not require that discovery be exhaustive. *See,*
10 *e.g., In re Immune Response Securities Litigation*, 497 F. Supp. 2d 1166, 1174 (S.D. Cal.
11 2007) (settlement approved where informal discovery gave the parties a clear view of the
12 strength and weaknesses of their cases). The fact that settlement results from arms length
13 negotiations following "relevant discovery" creates "a presumption that the agreement is
14 fair." *Linney v. Cellular Alaska Partnership*, 1997 WL 450064, at *5 (N.D. Cal. 1997).

15 With respect to the claims asserted on behalf of the Settlement Class in this case,
16 there are significant risks that support the reduced compromise amount. These risks
17 include, but are not limited to: (i) the risk that Plaintiff would be unable to establish
18 liability for allegedly unpaid straight time or overtime wages, *see Duran v. US Bank Nat'l*
19 *Ass'n*, 59 Cal. 4th 1, 39 & fn. 33 (2014) ("*Duran*"), *citing Dilts v. Penske Logistics, LLC*
20 2014 WL 205039 (S.D. Cal. 2014) (dismissing certified off-the-clock claims based on
21 proof at trial); (ii) the risk that Defendant's challenged employment policies might not
22 ultimately support class certification or a class-wide liability finding, *see, Duran*, 59 Cal.
23 4th at 14 & fn. 28 (citing Court of Appeal decisions favorable on class certification issue
24 without expressing opinion as to ultimate viability of proposition); (iii) the risk that
25 uncertainties pertaining to the ultimate legality of Defendant's policies and practices could
26 preclude class-wide awards of statutory penalties under Labor Code §§ 203 and 226(e);
27 (iv) the risk that individual differences between Settlement Class Members could be
28 construed as pertaining to liability, and not solely to damages, *see, Duran*, 59 Cal. 4th at

19; (v) the risk that any civil penalties award under the PAGA could be reduced substantially by the Court in its discretion, see Labor Code § 2699(e)(1); (vi) the risk that class treatment could be deemed improper as to one or more claims except for settlement purposes; (vii) the risk that lengthy appellate litigation could ensue, (viii) the substantial risk that differences in the work experiences of employees would make both certification and proof of liability prohibitively unlikely. Defendant strongly denies any liability and the propriety of class certification for any reason other than settlement. (Leviant Decl., ¶ 16.) Continued litigation of this lawsuit presented Plaintiff and Defendant with substantial legal risks that were (and continue to be) very difficult to assess.

In light of the uncertainties of protracted litigation, the settlement amount reflects a fair and reasonable recovery for the Settlement Class Members. (Leviant Decl. ¶¶ 13-20.) The settlement amount is, of course, a compromise figure. (Leviant Decl. ¶ 17.) By necessity it took into account risks related to liability, damages, and all the defenses asserted by the Defendant. (*Id.*) Moreover, each Settlement Class Member will be given the opportunity to opt out of the Settlement, allowing those who feel they have claims that are greater than the benefits they can receive under this Settlement, to pursue their own claims. (*Id.*) For the approximately 760 members of the Class, the average *gross* recovery before deductions for taxes, fees, and other costs, is approximately **\$500.00** per class member. (*Id.*) The value of this amount reflects a fair compromise well within the range of reasonableness. Given the strong case that Defendant could bring to bear to challenge certification and liability, this is not an inconsequential sum. And, confirming the fundamental fairness of the settlement, each Class Member will be compensated ratably based on the number of weeks they that they worked in a relevant position during the class period (the Class members worked full time schedules, rendering allocation by work week equitable). (*Id.*)

The Gross Settlement Amount of **\$380,000.00** is about **94.47%** of the **\$402,253.16** estimate of *risk-adjusted* recovery (excluding interest) at *this* stage in the litigation. While Plaintiff would certainly have preferred to recover more (and Defendant would have

1 preferred to pay less), this outcome is in line with a carefully constructed estimate of the
2 current fair value of the case. (Leviant Decl., ¶ 18.) On that basis, it would be unwise to
3 pass up this settlement opportunity. The maximum damage values are estimates based on
4 average wage rates, numbers of employees, and the amount of time covered by the class
5 period. (*Id.*)

6 After analyzing the claims in this matter, Plaintiff has concluded that the value of
7 this Settlement is fair, adequate and reasonable. (*Id.*) The maximum calculated reasonable
8 exposure, after removing the *most* implausible or extreme estimated recoveries, is
9 **\$2,347,135.40**, *including* PAGA penalties (which, nevertheless, includes a highly
10 optimistic view of what could be proven in this matter). (*Id.*) The risk-adjusted value of
11 each claim, on a claim-by-claim basis, is as follows:

- 12 • The estimated exposure for off the clock work over the class period was
13 calculated to be **\$85,947.00** (assuming computer start-up time). With risk
14 factor discounts for certification (estimated at 0.4) and liability proof
15 (estimated at 0.35), the current value of that claim is estimated by Plaintiff's
16 counsel to be only **\$12,036.36**.
- 17 • The reasonably estimated exposure for rest break violations over the class
18 period was calculated at **\$299,242.20**, but with low chances of certification
19 and proof of liability (30% and 20% respectively) for a risk-adjusted
20 exposure of **\$17,974.53** (based on an extreme estimate of one rest period
21 violation for *every* Class Member in **100%** of their work weeks).
- 22 • The reasonably estimated exposure for meal break violations over the class
23 period was calculated at **\$77,078.20** before any risk reductions, but with
24 chances of certification and proof of liability (40% and 35% respectively) for
25 a risk-adjusted exposure of \$10,790.95 (based on facial violations in data and
26 an assumed percentage of violations that would not be deemed voluntary).
- 27 • The reasonably estimated exposure for unreimbursed expenses over the class
28 period was calculated at **\$12,125.00** before any risk reductions, but with

chances of certification and proof of liability (40% and 40% respectively) for a risk-adjusted exposure of \$1,940.00.

- Risk-adjusted penalty recoveries for wage statement and Labor Code § 203 penalties were estimated to be approximately **\$61,330.50** and **\$110,960.82**, respectively, on maximum exposures of **\$227,150.00** and **\$410,966.00**, respectively (not only are the Section 203 and 226 penalties entirely dependent on the success of the unpaid wage claims, they both must also overcome the defense that Defendant did not intend any underpayment; additionally, the 226 penalty has a one-year statute).
- Performing risk-adjusted valuations for all claims yields a total value in the range of only **\$219,603.16**, excluding PAGA.⁴ (*Id.*) PAGA penalties were calculated as having a maximum realistic exposure of **\$1,217,600.00**, but a risk adjusted value of **\$182,640.00**, after factoring in risks of reduction in penalties pursuant to Court discretion and the high risk of the inability to prove violations for all aggrieved employees. (Leviant Decl., ¶ 18.)

This result here is fully supportable as reasonable. First, rest break and meal period claims have been challenging to certify for many years, even after *Brinker*. (Leviant Decl., ¶ 19.) Second, off-the-clock claims have proven to be extremely difficult to certify by their very nature. In this case, the difficulty of certifying and proving off-the-clock and meal period claims is compounded by the practice of having employees enter their own times manually in a timekeeping system which they confirm as accurate each week. Third, certification rates are lower than conventional wisdom holds. *See, e.g., H. Scott Leviant, Second Interim Report on class actions in California sheds new light on*

⁴ In a sense, it is nonsensical to assign specific percentages to future events, but it does provide a specific method for attempting to reduce the concept of “very high risk” or “high risk” to a quantifiable amount. Certification of a claim is typically a binary event. One does not obtain a 20% certification; a claim is either certified or it is not. But the current expected value is best quantified by applying a risk reduction, based on the total experience of counsel.

1 *certification* (February 19, 2010), www.thecomplexlitigator.com, available at
2 [http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-](http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-actions-in-california-sheds-n.html)
3 [actions-in-california-sheds-n.html](http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-actions-in-california-sheds-n.html); *see also*, *Findings of the Study of California Class*
4 *Action Litigation*, 2000-2006, available at
5 <http://www.courtinfo.ca.gov/reference/documents/class-action-lit-study.pdf> (finding, as
6 part of a study conducted by the Judicial Council of California, at page 5, and in Table 9,
7 at page 15, that only 21.4% of all class actions were certified either as part of a settlement
8 *or* as part of a contested certification motion). In estimating risk adjustments here,
9 Plaintiff's counsel has assumed estimated certification probabilities that equal or
10 substantially *exceed* the average rate at which cases were certified in California over the
11 study years, based upon data available through the California Courts website. (*Id.*) And
12 those certification risk estimates are likely high, given the factual challenges present in this
13 case in particular. Given that well under 20% of all cases filed in California as proposed
14 class actions are ultimately certified by way of a contested motion, and a similar trend is
15 seen in federal courts, it is fair to say that, if anything, the use of high estimates for
16 certification *overstates* the realistic current claim value. (*Id.*) It would also be appropriate
17 to evaluate the result by examining only the premium wages at issue, excluding penalties
18 and interest.⁵ Under that metric, the settlement recovered an amount approximately equal
19 to 79% of the realistic unreduced claim value for the premium wages at issue
20 (\$479,294.40, for wages, and meal and rest period premiums). Viewed either way, this
21 Settlement achieves the goals of the litigation.

22 By obtaining reasonable value for their claims in light of the substantial risks of
23

24 ⁵ The exclusion of interest and penalties from the fairness evaluation is proper
25 because, first, PAGA penalties are discretionary (*see* Lab. Code § 2699(e)(2) (the court in
26 its discretion “may award a lesser amount than the maximum civil penalty amount
27 specified by this part...”), and, second, courts evaluate the strength of a proposed
28 settlement without taking potential penalties or interest into consideration. *See Rodriguez*
v. West Publishing Corp., 563 F.3d 948, 955 (9th Cir. 2000); *see also Miller v. CEVA*
Logistics U.S.A., Inc., 2015 WL 729638, at *7 (E.D. Cal. Feb. 19, 2015) (court utilized
calculation of a defendant's exposure exclusive of interest and penalties to determine
whether the settlement fell within the range of possible approval).

litigation, Plaintiff clearly achieved a fair settlement that merits approval, particularly in light of the risks posed by further litigation.

2. The Agreed Upon Fees and Costs Are Reasonable

a) Plaintiff seeks reasonable fees.

The compensation sought for Plaintiff's counsel is also fair and reasonable. The Ninth Circuit has directed that, to determine what constitutes a fair and reasonable percentage of the settlement for purposes of calculating common fund attorneys' fees, the courts should begin with a "benchmark" percentage of the total fund. *Paul, Johnson, Alston & Hunt v. Gaulty*, 886 F.2d 268, 272 (9th Cir. 1989); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002); *Six Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990). The percentage can be adjusted upwards where the risks overcome, the benefits obtained and the work necessary to achieve those results supports such an adjustment of the benchmark. The results here fully support the requested fee.

The Gross Settlement Amount is \$380,000.00. Plaintiff's counsel has agreed to seek no more than **\$126,666.67**. (Leviant Decl., ¶ 11.) Plaintiff's counsel also requests actual costs incurred and paid without reimbursement in the litigation of this Action, not to exceed \$20,000.00.

b) A lodestar crosscheck will support the requested fee.

Plaintiff will provide the Court with information for the purposes of performing a cross-check using the lodestar method at the time Plaintiff's fee application is considered at the final fairness hearing.

The Ninth Circuit has recognized that the lodestar method "creates incentives for counsel to spend more hours than may be necessary on litigating a case so as to recover a reasonable fee, since the lodestar method does not reward early settlement." *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050, n.5 (9th Cir. 2002). The Ninth Circuit has thus cautioned that, while a lodestar method can be used as a cross check on the reasonableness of fees based on a percentage of recovery method if a district court in its discretion chooses to do so, a lodestar calculation is not required and it did "not mean to imply that class

1 counsel should necessarily receive a lesser fee for settling a case quickly.” *Id.*

2 The fee requested by Plaintiff’s counsel represents the fair market value of their
3 labor, and it *is* fair that every class member who benefits from the opportunity to claim a
4 share of the settlement pay his or her pro rata share of attorney’s fees. The regular
5 contingent fee contract of Plaintiff’s counsel provides for attorney’s fees between 40% and
6 45% of any recovery obtained for the client. It would be unfair to compensate Plaintiff’s
7 counsel at any lesser rate than the amount requested because the value of their labor is
8 consistent with the requested fee.

9 Finally, as required by *In re Mercury Interactive*, 816 F.3d 988 (9th Cir. 2010),
10 Plaintiff will file a motion for fees and costs after the Court sets a hearing date for
11 Plaintiff’s Motion for Final Approval of Class Action Settlement.

12 **3. The Service Payments Are Reasonable**

13 Service payment awards serve to reward the named plaintiff for the time and effort
14 expended on behalf of the class, and for exposing herself to the significant risks of
15 litigation. “Courts routinely approve incentive awards to compensate named plaintiffs for
16 the services they provided and the risks they incurred during the course of the class action
17 litigation.” *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001); *In re*
18 *Southern Ohio Correctional Facility*, 175 F.R.D. 270, 272 (S.D. Ohio 1997). In *Coca-*
19 *Cola*, for example, the court approved incentive awards of \$300,000 to each named
20 plaintiff in recognition of the services they provided to the class by responding to
21 discovery, participating in the mediation process and taking the risk of stepping forward on
22 behalf of the class. *Coca-Cola*, 200 F.R.D. at 694; *see also Van Vranken v. Atl. Richfield*
23 *Co.*, 901 F. Supp. 294, 300 (N.D. Cal. 1995) (approving \$50,000 participation award).

24 Here, Plaintiff’s counsel requests that the Court grant Plaintiff a service award of
25 \$7,500. The amount of the service award is reasonable given the risks undertaken by
26 Plaintiff. Taking the risk of filing a lawsuit against an employer deserves reward.
27 Additionally, Plaintiff was actively involved in the litigation and settlement negotiations of
28 this Action. And Plaintiff worked diligently with counsel to prepare the action and

1 conferred with counsel regarding settlement negotiations. (Declaration of Brutout, ¶¶ 5-
2 19; Leviant Decl., ¶ 32.) The requested amount is reasonable.

3 4. **The Class Notice**

4 Rule 23(c)(2)(B) provides that, in any case certified under Rule 23(b)(3), the court
5 must direct to class members the “best notice practicable” under the circumstances. Rule
6 23(c)(2)(B) does not require “actual notice” or that a notice be “actually received.” *Silber*
7 *v. Mabo*, 18 F.3d 1449, 1454 (9th Cir. 1994). Notice need only be given in a manner
8 “reasonably calculated, under all the circumstances, to apprise interested parties of the
9 pendency of the action and afford them an opportunity to present their objections.”
10 *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

11 Here, the Parties have agreed to provide notice through first class mail to class
12 members, whose last known addresses are known to Defendant. If any notices are
13 returned with new forwarding addresses, the administrator will re-mail the Notice to the
14 current address. This method of notice clearly suffices.

15 Rule 23(c)(2)(B) also sets forth requirements regarding the content of the notice.
16 The notice must concisely and clearly state in plain, easily understood language:

- 17 • the nature of the action;
- 18 • the definition of the class certified;
- 19 • the class claims, issues, or defenses;
- 20 • that class member may enter an appearance through counsel;
- 21 • that the court will exclude from the class any member who requests exclusion,
22 stating when and how members may elect to be excluded; and
- 23 • the binding effect of a class judgment on class members under Rule 23(c)(3).

24 The proposed notice attached as Exhibit A to the Stipulation complies fully with Rule
25 23(c)(2)(B). (Leviant Decl., Exhibit “A” attached to Exhibit “1”.) Courts routinely
26 approve class notices even when they provide only general information about a settlement.
27 *See, e.g., Mendoza v. United States*, 623 F.2d 1338, 1351 (9th Cir. 1980) (“very general
28 description of the proposed settlement” sufficient); *In re Michael Milken & Assocs. Sec.*

1 *Litig.*, 150 F.R.D. 57, 60 (S.D.N.Y. 1993) (notice “need only describe the terms of the
2 settlement generally.”) The class notices drafted by the Parties exceed the “general
3 information” threshold, providing more than adequate notice about the Settlement.

4 **VI. THE COURT SHOULD SCHEDULE A FAIRNESS HEARING**

5 The last step in the settlement approval process is the fairness hearing, where the
6 Court makes a final determination about the propriety of settlement. Plaintiff requests that
7 the fairness hearing in this case be scheduled for a date approximately 145 days after
8 issuance of the Court’s Order granting preliminary approval of the Settlement. Under the
9 Settlement, the Settlement Administrator will mail out class notices approximately 28 days
10 after preliminary approval, and class members have 60 days after mailing of the notice to
11 submit exclusions or objections. Since the final approval hearing must be held at least 28
12 days after the filing of the final approval motion, Plaintiff proposes that the final approval
13 hearing should be scheduled for September 14, 2023, or the first available date thereafter
14 that is at least 145 days after the issuance of an Order granting preliminary approval.

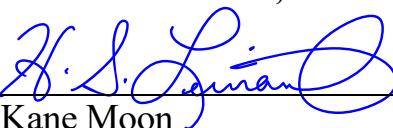
15 **VII. CONCLUSION**

16 Plaintiff negotiated a settlement that resolves claims and recovers money for the
17 approximately 760 Settlement Class Members. This settlement is fair and reasonable,
18 especially given the claims and the potential defenses to them and the daunting hurdles
19 presenting substantial risks for class certification. Plaintiff asks the Court to grant
20 preliminary approval of the settlement and adopt the proposed order submitted herewith.

21 Respectfully submitted,

22 Dated: March 8, 2023

MOON & YANG, APC

23 By: 
24 Kane Moon
25 H. Scott Leviant
26 Mariam Ghazaryan

27 Attorneys for Plaintiff
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