

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

**RAMONA J. HOGUE, individually and
on behalf of all others similarly situated,**

Plaintiff.

v.

**YRC, INC. d.b.a. YRC FREIGHT, and
DOES 1 through 20,**

Defendants.

Case No.: SACV 16-01338-CJC(JEMx)

**ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

I. INTRODUCTION & BACKGROUND

Plaintiff Ramona Hogue brings this wage-and-hour class action on behalf of 230 line-haul truck drivers employed by Defendant YRC, Inc. (“YRC”) from May 19, 2012 until August 17, 2017 (the “Class Period”). Defendant YRC is a transportation company that operates 21 trucking terminals in California. Plaintiff Hogue was employed as a line-haul driver for YRC from approximately 2006 until 2009, and from approximately

1 2014 through the present. (Dkt. 1-1 [Complaint, hereinafter “Compl.”] ¶ 4.) Plaintiff
2 now seeks preliminary approval of a \$700,000 non-reversionary class action settlement
3 against YRC. (Dkt. 29.)
4

5 The crux of Plaintiff’s claims is that YRC failed to compensate her and similarly
6 situated truck drivers for time associated with rest breaks and non-driving tasks. (Compl.
7 ¶ 1.) According to Plaintiff, YRC compensated its line-haul drivers based on a piece-rate
8 “centers per mile” formula with hourly pay available only for certain tasks. (*Id.* ¶ 19.)
9 YRC allegedly failed to separately compensate its drivers for their ten-minute rest periods
10 and non-driving tasks, such as pre- and post-trip inspections and completion of work-
11 related paperwork. (*Id.* ¶ 23.) YRC also purportedly failed to reimburse its drivers for
12 mandatory use of their personal cell phones while on the job. (*Id.* ¶ 28.)
13

14 Based on this alleged conduct, Plaintiff Ramona Hogue filed the instant action on
15 May 19, 2016 in San Bernardino County Superior Court against YRC. (*See generally*
16 Compl.) YRC removed the action to this Court on June 23, 2016. (Dkt. 1.) Plaintiff
17 asserts seven state-law claims for (1) failure to pay separately and hourly for time spent
18 on rest breaks and other non-driving tasks, (2) failure to provide paid rest periods and pay
19 missed rest break premiums, (3) failure to issue accurate wage statements, (4) failure to
20 pay compensation due upon separation of employment, (5) failure to reimburse
21 necessarily incurred business expenses, (6) penalties under the California Private
22 Attorneys General Act (“PAGA”), and (7) unfair and unlawful business practices in
23 violation of California Unfair Competition Law. (*See generally* Compl.)
24

25 The parties have engaged in substantial discovery and conducted two mediations.
26 Through discovery, the parties exchanged documents relevant to YRC’s compensation
27 and rest break policies, line-haul drivers’ job duties and requirements, and putative class
28 members’ wage statements. (Dkt. 29-1 [Declaration of Craig J. Ackerman, hereinafter

1 “CJA Decl.”] ¶ 9.) On March 20, 2018, the parties participated in a full-day mediation
2 with experienced wage-and-hour class action mediator Joel M. Grossman, Esq. (CJA
3 Decl. ¶ 11.) The parties were unable to reach a resolution at the mediation, largely
4 because YRC believed that legislation that retroactively preempted state rest break laws
5 for truckers would soon be enacted. (*Id.* ¶ 12.)

6
7 When the legislation did not pass, YRC decided to participate in a second
8 mediation on September 5, 2018. The second mediation was before Lisa Klerman, Esq.,
9 another mediator specializing in wage-and-hour and employment law cases. (*Id.* ¶ 13.)
10 The parties reached a class-wide agreement in principle and after several months of
11 further discussion, finalized and executed the Settlement Agreement for which they now
12 seek preliminary approval. Under the Settlement Agreement, YRC shall be released of
13 all claims asserted in the lawsuit in exchange for YRC’s agreement to pay a non-
14 reversionary settlement amount of \$700,000, including attorneys’ fees, litigation costs,
15 settlement administration expenses, PAGA penalties, and Plaintiff’s proposed incentive
16 award. (Dkt. 29-5 [Settlement Agreement].) The remaining amount, estimated at
17 \$420,000, will be distributed pro rata based on the number of weeks worked during the
18 Class Period as a proportion of the total weeks worked by all Class Members. Before the
19 Court is Plaintiff’s unopposed motion for preliminary approval of its \$700,000 non-
20 reversionary class action settlement against YRC. (Dkt. 29 [hereinafter “Mot.”].) For the
21 following reasons, Plaintiff’s motion is **GRANTED**.¹

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28 ¹ Having read and considered the papers presented by the parties, the Court finds this matter appropriate
for disposition without a hearing. *See* Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing set
for December 10, 2018, at 1:30 p.m. is hereby vacated and off calendar.

II. ANALYSIS

A. Class Certification Requirements

Pursuant to Federal Rule of Civil Procedure 23, Plaintiff seeks provisional certification of a class for settlement purposes only. The proposed class is defined as

All line-haul drivers employed by YRC who held California drivers' licenses and whose home terminals were in California, and who were paid, in whole or in part, on the basis of a certain amount of cents per mile from May 19, 2012 up until August 7, 2017 (i.e., when Defendant began to pay separately for rest periods) at the terminal at which that putative Class Member worked.

(Settlement Agreement at 1.)

When a plaintiff seeks conditional class certification for purposes of settlement, the Court must ensure that the four requirements of Rule 23(a) and at least one of the requirements of Rule 23(b) are met. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997); *Staton v. Boeing Co.*, 327 F.3d 938, 952–53 (9th Cir. 2003). Under Rule 23(a), the plaintiff must show the class is sufficiently numerous, that there are questions of law or fact are common to the class, that the claims or defenses of the representative parties are typical of those of the class, and that the representative parties will fairly and adequately protect the class's interests. Under Rule 23(b), the plaintiff must show that the action falls within one of the three "types" of classes. Here, Plaintiff seeks certification pursuant to Rule 23(b)(3). Rule 23(b)(3) allows certification where (1) questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and (2) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

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1 **1. Rule 23(a) Requirements**

2 3 **i. Numerosity**

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5 Rule 23(a)(1) requires that “the class is so numerous that joinder of all members is
6 impracticable.” “No exact numerical cut-off is required; rather, the specific facts of each
7 case must be considered.” *In re Cooper Cos. Inc. Sec. Litig.*, 254 F.R.D. 628, 634 (C.D.
8 Cal. 2009) (citing *Gen. Tel. Co. of Nw., Inc. v. E.E.O.C.*, 446 U.S. 318, 330 (1980)). “As
9 a general matter, courts have found that numerosity is satisfied when class size exceeds
10 40 members.” *Moore v. Ulta Salon, Cosmetics & Fragrance, Inc.*, 311 F.R.D. 590, 602–
11 03 (C.D. Cal. 2015); see *Tait v. BSH Home Appliances Corp.*, 289 F.R.D. 466, 473–74
12 (C.D. Cal. 2012). Here, numerosity is easily satisfied because there are approximately
13 230 line-haul drivers in the proposed Class. (CJA Decl. ¶ 4.)

14 15 **ii. Commonality**

16
17 Rule 23(a)(2) requires that “there are questions of law or fact common to the
18 class.” The plaintiff must “demonstrate that the class members ‘have suffered the same
19 injury,’” which “does not mean merely that they have all suffered a violation of the same
20 provision of law.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011) (quoting
21 *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157 (1982)). Rather, the plaintiff’s claim
22 must depend on a “common contention” that is capable of classwide resolution. *Id.* This
23 means “that determination of its truth or falsity will resolve an issue that is central to the
24 validity of each one of the claims in one stroke.” *Id.*

25
26 Plaintiff has alleged a number of common questions of law and fact, including (1)
27 whether YRC’s piece-rate pay system violated California Labor Code § 226.2 by failing
28 to separately pay drivers for rest breaks and non-driving tasks, (2) whether YRC’s failure

1 to compensate drivers for unpaid rest breaks violated California Labor Code § 226.7, (3)
 2 whether YRC's failure to pay former employees all wages due at the time of separation
 3 violated California Labor Code § 203, (4) whether YRC's issuance of wage statements
 4 that do not include time spent on rest breaks or inspections violated California Labor
 5 Code §§ 226(a) and 226.2, (5) whether YRC's failure to reimburse Class Members' cell
 6 phone expenses violated California Labor Code § 2802, (6) whether, based on the
 7 foregoing, YRC is liable for PAGA penalties, and (7) whether, based on the foregoing,
 8 YRC violated California's Unfair Competition Law. Resolution of these questions will
 9 resolve issues central to the validity of Plaintiff's claims "in one stroke." *Wal-Mart*
 10 *Stores*, 564 U.S. at 350.

11 12 **iii. Typicality**

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 14 Rule 23(a)(3) requires that the "claims or defenses of the representative parties are
 15 typical of the claims or defenses of the class." Representative claims are "typical" if they
 16 are "reasonably coextensive with those of the absent class members; they need not be
 17 substantially identical." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998).
 18 Here, Plaintiff Hogue was subject to YRC's same compensation and reimbursement
 19 practices as the Class Members. Her injury—lost wages and unreimbursed expenses—
 20 and claims—violations of the California Labor Code—are the same as those of the Class
 21 Members. Accordingly, the typicality requirement is satisfied.

22 23 **iv. Adequacy**

24
 25 Rule 23(a)(4) requires that "the representative parties will fairly and adequately
 26 protect the interests of the class." This factor requires (1) a lack of conflicts of interest
 27 between the proposed class and the proposed representative plaintiff, and (2)
 28 representation by qualified and competent counsel that will prosecute the action

1 vigorously on behalf of the class. *Staton*, 327 F.3d at 957. The concern in the context of
 2 a class action settlement is to ensure that there is no collusion between the defendant,
 3 class counsel, and class representatives to pursue their own interests at the expense of the
 4 interests of the rest of the members of the class. *Id.* at 958 n.12. Here, the claims of the
 5 named Plaintiff and Class Members are coextensive, and there is no conflict between
 6 Plaintiff and any other Class Member. (See CJA Decl. ¶ 2.) Further, counsel for
 7 Plaintiff, Ackermann & Tilajef and HammondLaw, have significant experience litigating
 8 class actions and have been certified by numerous state and federal courts as competent
 9 and adequate class counsel. (*Id.* ¶¶ 14–26.) Counsel have vigorously prosecuted this
 10 action, leading to the current Settlement Agreement. Every indication is that they have
 11 done so capably and adequately.

12 13 **2. Rule 23(b)(3) Requirements**

14
 15 In addition to the requirements of Rule 23(a), Plaintiff must satisfy the
 16 requirements of Rule 23(b)(3). Under Rule 23(b)(3), a plaintiff must demonstrate that
 17 common questions “predominate over any questions affecting only individual members”
 18 and that a class action is “superior to other available methods for fairly and efficiently
 19 adjudicating the controversy.” The predominance requirement overlaps with Rule
 20 23(a)(2)’s commonality requirement, but is a more demanding inquiry. *Hanlon*, 150 F.3d
 21 at 1019. The “main concern in the predominance inquiry . . . [is] the balance between
 22 individual and common issues.” *In re Wells Fargo Home Mortg. Overtime Pay Litig.*,
 23 571 F.3d 953, 959 (9th Cir. 2009). The plaintiff must show that “questions common to
 24 the class predominate, not that those questions will be answered, on the merits, in favor
 25 of the class.” *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 133 S. Ct. 1184, 1191 (2013).

26
 27 Questions common to the Class predominate over any questions affecting only
 28 individual members. Here, YRC had a uniform policy of paying its line-haul drivers on a

1 piece-rate basis without separately compensating those drivers for rest breaks and time
 2 spent on the clock doing non-driving tasks. The common questions of whether YRC
 3 failed to pay Class Members separately for their rest breaks and non-driving tasks, failed
 4 to pay premiums for unpaid rest breaks, and failed to reimburse Class Members for their
 5 required usage of their personal cell phones predominate over any individualized issues.
 6 Although damage calculations will necessarily involve driver-specific determinations,
 7 that alone does not defeat Rule 23(b)(3) certification. *See Vaquero v. Ashley Furniture*
 8 *Indus., Inc.*, 824 F.3d 1150, 1155 (9th Cir. 2016) (“Under . . . our precedent, the need for
 9 individual damage calculations does not, alone, defeat class certification.”); *see also*
 10 *Quezada v. Con-Way Freight, Inc.*, 2012 WL 4901423, at *4–6 (N.D. Cal. Oct. 15, 2012)
 11 (finding that defendant’s “undisputed pay scheme . . . to not separately compensate line-
 12 haul drivers for the time” spent conducting pre- and post-trip inspections presented
 13 “common legal questions [that] predominate over individualized issues”).

14
 15 The Court also finds that proceeding as a class is superior to other methods of
 16 resolving the issues in this case. A class action may be superior “[w]here classwide
 17 litigation of common issues will reduce litigation costs and promote greater efficiency.”
 18 *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996). It is also superior
 19 when “no realistic alternative” to a class action exists. *Id.* at 1234–35. Here, given the
 20 common issues presented by all Class Members, adjudicating these claims on an
 21 individual basis for 230 individual drivers is unrealistic. Additionally, although the Court
 22 foresees no management problems from litigating this dispute as a class action, the
 23 Supreme Court has held that a district court “need not inquire whether the case, if tried,
 24 would present intractable management problems” in a “settlement-only class
 25 certification.” *Amchem*, 521 U.S. at 620. Accordingly, Plaintiff’s proposed Class is
 26 appropriate for provisional certification under Rules 23(a) and 23(b)(3).

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B. Fairness of the Proposed Settlement

Plaintiff also seeks preliminary approval of the Settlement Agreement. Rule 23(e) “requires the district court to determine whether a proposed settlement is fundamentally fair, reasonable, and accurate.” *Staton*, 327 F.3d at 959 (quoting *Hanlon*, 150 F.3d at 1026). To determine whether this standard is met, a district court must consider a number of factors, including “the strength of the 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; . . . and the reaction of the class members to the proposed settlement.” *Id.* (quoting *Molski v. Gleich*, 318 F.3d 937, 953 (9th Cir. 2003)). At the preliminary approval stage, a full “fairness hearing” is not required. *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007). Rather, the inquiry is whether the settlement “appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval.” *Id.*

Having reviewed the arms-length negotiation process and substantive terms of the Settlement Agreement, the Court finds no obvious deficiencies or grounds to doubt its fairness. The parties did not settle until after substantial discovery and two mediations before neutral mediators. *See In re Heritage Bond Litig.*, No. 02-ML-1475 DT, 2005 WL 1594403, at *9 (C.D. Cal. June 10, 2005) (“A presumption of correctness is said to attach to a class settlement reached in arm’s-length negotiations between experienced capable counsel after meaningful discovery.” (internal quotation and citations omitted)). There is no evidence of collusion during the parties’ settlement negotiations. Indeed, “[t]he assistance of an experienced mediator in the settlement process confirms that the

1 settlement is non-collusive.” *Satchell v. Fed. Express Corp.*, 2007 WL 1114010, at *4
2 (N.D. Cal. Apr. 13, 2007).

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4 The Settlement Agreement also presents a fair compromise in light of the risks and
5 expense of continued litigation. YRC vigorously opposed class certification and raised
6 several viable federal preemption defenses to Plaintiff’s claims. (Mot. at 14–19.) The
7 parties, after significant discovery, substantive briefing, and two mediations, were able to
8 realistically value YRC’s liability and assess the risk of moving forward with class
9 certification, motions for summary judgment, and potentially trial. Litigation had
10 reached a stage where the parties had a clear view of the strengths and weaknesses of
11 their positions to reach a fair and reasonable settlement. The \$700,000 settlement amount
12 represents 65% of the estimated damages to the Class. (*Id.*) With that settlement, the net
13 average recovery per Class Member is \$1,826. (CJA Decl. ¶ 61.) In light of the
14 significant hurdles to recovery if litigation were to continue, the Class’s recovery is a fair
15 result.

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17 The \$700,000 settlement amount is also well within the range of reasonableness
18 when compared to the settlements in similar cases where preemption was a significant
19 issue at the time of settlement. *See, e.g., Moss v. USF Reddaway, Inc.*, Case No. 5:15-cv-
20 01541-JAK, Dkt. 124 (C.D. Cal. July 25, 2018) (granting final approval of a class action
21 settlement on behalf of 540 truck drivers employed by YRC’s sister company where the
22 class members’ net recovery per work week was similar to that here); *Maldonado v.*
23 *Heavy Weight Transp., Inc.*, Case No. 2:16-cv-08838-CAS-RAO, Dkt. 40 (C.D. Cal. Dec.
24 11, 2017) (same). The proposed \$20,000 carve out for PAGA penalties is also adequate
25 and fair given that YRC has brought its compensation policy into compliance with the
26 California Labor Code, and there is no evidence that YRC deliberately underpaid its
27 employees. *See Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016)
28 (finding that a reduction in PAGA penalties is appropriate where there is no evidence of

deliberate evasion of a clear legal obligation); *Heavy Weight*, Case No. 2:16-cv-08838-CAS-RAO, Dkt. 40 (approving \$5,000 PAGA allocation out of a \$340,000 settlement).

C. Attorneys' Fees and Incentive Award

Plaintiff's counsel also intend to seek attorneys' fees of \$210,000, or 30% of the settlement amount. (Mot. at 23.) The Ninth Circuit has set 25% as the benchmark for common fund cases. *Torrissi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993). To justify a departure from that benchmark, courts must provide adequate explanation in the record of any "special circumstances." *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d at 942–43 (citing *Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990)); *Paul, Johnson, Alston & Hunt v. Gaulty*, 886 F.2d 268, 272 (9th Cir. 1989) ("We note with approval that one court has concluded that the 'bench mark' percentage for the fee award should be 25 percent. That percentage amount can then be adjusted upward or downward to account for any unusual circumstances involved in this case." (internal citation omitted)). It is unclear what circumstances here justify a departure from the 25% benchmark. Plaintiff's counsel cite to cases in which courts have awarded fees above 30%, (Mot. at 23–24), but fail to explain how those cases are analogous to the circumstances here.

Plaintiff Hogue also seeks an incentive award in the amount of \$10,000 to compensate her time and efforts on behalf of the Class. (Mot. at 24–25.) Plaintiff was deposed, attended both mediations, and helped counsel serve the interests of the Class. (CJA Decl. ¶ 80.) However, Plaintiff's \$10,000 incentive award may be excessive when compared to the average net recovery. *See In re Toys R Us-Del., Inc.—Fair & Accurate Credit Transactions Act Litig.*, 295 F.R.D. 438, 470 (C.D. Cal. 2014) (explaining that California district courts typically approve incentive awards between \$3,000 and \$5,000). The Court will expect Class Counsel to provide detailed evidence as to why a 30%

1 attorneys' fees award and Plaintiff's incentive award are fair and just. Although the
2 Court has concerns regarding the proposed awards, it nonetheless finds that the
3 Settlement Agreement is appropriate for preliminary approval. As discussed above, the
4 settlement eliminates the significant risk of non-recovery in continuing litigation. The
5 Court will make its final decision on the fairness and adequacy of the settlement after the
6 parties have addressed the Court's concerns identified herein and after Class Members
7 have had an opportunity to object.

8 9 **D. Settlement Administrator**

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11 Plaintiff requests appointment of CPT Group as the Settlement Administrator and
12 approval of an amount no more than \$20,000 to be deducted from the settlement amount
13 for the costs of claims administration. (Mot. at i; Dkt. 29-4 at 3.) There is no further
14 information in the record that might aid the Court in determining whether CPT Group is
15 an adequate settlement administrator. But the Court takes judicial notice of other cases in
16 which federal courts in California have approved CPT Group as administrator in class
17 action settlements. *See, e.g., Ruiz v. JCP Logistics, Inc.*, 2016 WL 6156211, at *7 (C.D.
18 Cal. Mar. 10, 2016); *Altamirano v. Shaw Indus., Inc.*, 2015 WL 4512372, at *10 (N.D.
19 Cal. July 24, 2015). Accordingly, the Court appoints CPT Group as Settlement
20 Administrator here. Any award of administrator expenses will need to be substantiated
21 with detailed evidence.

22 23 **E. Notice of the Proposed Settlement**

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25 Finally, Plaintiff seeks approval of the proposed manner and form of the notice that
26 will be sent to the Class Members. Rule 23(c)(2)(B) provides that for Rule 23(b)(3)
27 classes, as here, the Court "must direct to class members the best notice that is practicable
28 under the circumstances, including individual notice to all members who can be

1 identified through reasonable effort.” The proposed manner of notice outlined in the
2 Settlement Agreement satisfies this standard. (*See* Settlement Agreement at 12.) No
3 later than fifteen calendar days after the entry of this Order, YRC shall provide the
4 Settlement Administrator with an updated list of Class Members. (*Id.*) Within thirty
5 calendar days, the Settlement Administrator will send each Class Member the Class
6 Notice via first-class mail. (*Id.*) If a Class Notice is returned without a forwarding
7 address, the Settlement Administrator will conduct a skip trace to ascertain the current
8 address for the particular Class Member and resend the Class Notice to the updated
9 address within three days. (*Id.*)

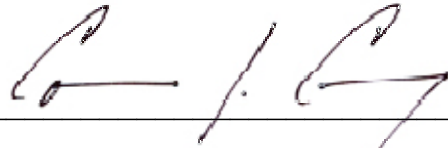
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11 The form of notice also meets the requirements of Rule 23(c)(2)(B). Notice to
12 Class Members must “clearly and concisely state, in plain, easily understood language: (i)
13 the nature of the action; (ii) the definition of the class certified; (iii) the class claims,
14 issues or defenses; (iv) that the class member may enter an appearance through an
15 attorney if the member so desires; (v) that the court will exclude from the class any
16 member who requests exclusion; (vi) the time and manner for requesting exclusion, and
17 (vii) the binding effect of a class judgment on members under Rule 23(c)(3).” Fed. R.
18 Civ. P. 23(c)(2)(B). Here, the proposed Class Notice provides clear information about
19 the definition of the class and nature of the action, a summary of the terms of the
20 proposed settlement, the process of objecting to the settlement, and the consequences of
21 inaction. The Class Notice will also provide specific details regarding the date, time, and
22 place of the Final Approval Hearing and inform Class Members that they may enter an
23 appearance. (*See id.* Ex. 1.)

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III. CONCLUSION

For the foregoing reasons, the Court **GRANTS** both provisional certification of the class for settlement purposes and preliminary approval of the Settlement Agreement. The Court hereby **APPOINTS** Plaintiff Hogue as Class Representative, Ackermann & Tilajef and HammondLaw as Class Counsel, and CPT Group as Settlement Administrator. The Court also **APPROVES** the proposed Class Notice and orders that it be disseminated to the class as provided in the Settlement Agreement. The final approval hearing shall be held on **Monday, May 20, 2019, at 1:30 p.m.**

DATED: November 28, 2018



CORMAC J. CARNEY
UNITED STATES DISTRICT JUDGE