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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

FIDEL ANTONIO MUNOZ, DOUGLASS OLMSTED, and ANDREW DAT, on behalf of themselves and all others similarly situated and in their capacities as private attorneys general,

Plaintiffs,

v.

MERCURY INSURANCE SERVICES, LLC, a California limited liability company; and DOES 1 through 50, Inclusive,

Defendant.

Case No.: 24STCV08298

Assigned for All Purposes to:
Hon. Carolyn B. Kuhl, Dept. 12

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT AGREEMENT, APPROVAL OF CLASS NOTICE, AND CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS

Date: February 5, 2025
Time: 10:30 a.m.
Dept.: 12

Complaint Filed: March 29, 2024
Trial Date: None Set

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I. INTRODUCTION

Plaintiffs Fidel Antonio Munoz, Douglass Olmsted, and Andrew Dat ("Plaintiffs") seek preliminary approval of a Class Action and PAGA Settlement Agreement and Release ("Settlement Agreement") on behalf of a proposed Class of all persons employed by Defendant Mercury Insurance Services, LLC ("Defendant") in California in a non-exempt position who worked for Defendant from August 4, 2018 through September 13, 2024 ("Class Members").

After engaging in substantial independent investigation, a full-day mediation before experienced class action mediator Lynn Frank, and hard-fought negotiations, the Parties agreed to a non-reversionary gross settlement amount of $2,800,000, exclusive of employer-side payroll taxes. The Settlement is strongly supported by experienced counsel, who carefully considered the strength of the claims and Defendant's potential defenses, as well as the expense, complexity, risks, and likely duration of continued litigation.

Subject to Court-approval, and after deductions for the PAGA Penalties, Class Representative Service Payments, the Class Counsel Fees Payment, and Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment, the remaining Net Settlement Amount will be distributed to Class Members who did not opt-out of the Settlement as follows:

Gross Settlement Amount	$2,800,000
PAGA Penalties	$140,000
Administration Expenses Payment	$23,000
Class Representative Service Payments	$30,000
Class Counsel Fees Payment	$980,000
Class Counsel Litigation Expenses Payment	$47,000
Net Settlement Amount	$1,580,000

Through this motion, Plaintiffs respectfully request that the Court enter an order: (1) provisionally certifying the Class under Code of Civil Procedure section 382 and California Rule of Court 3.769(c) for settlement purposes; (2) preliminarily approving the Settlement; (3) approving as to form the Court Approved Notice of Class Action Settlement and Hearing Date for Final Approval ("Class Notice") and ordering that the Class Notice be distributed to all Class Members; (4) appointing Fidel Antonio Munoz, Douglass Olmsted, and Andrew Dat as the Class

Representatives; (5) appointing Phoenix Settlement Administrators ("Phoenix") as the Settlement Administrator; (6) appointing James Hawkins APLC, GrahamHollis APC, and Crosner Legal, PC as Class Counsel; and (7) setting this matter for a hearing on the issues of final approval of the proposed Settlement, approval of the Class Representative Service Payments, approval of Class Counsel's attorneys' fees and costs, and approval of the administration fees and costs.

II. SUMMARY OF THE LITIGATION

On January 29, 2021, Plaintiff Olmsted filed a representative action under the Private Attorneys General Act ("PAGA") in the Santa Clara County Superior Court, Case No. 21CV376878. On February 22, 2022, Defendant moved to stay the action pending the Supreme Court's decision in *Viking River Cruises, Inc. v. Moriana*. The Court granted Defendant's motion on May 11, 2022.

On July 1, 2022, Defendant moved to compel arbitration of Plaintiff Olmsted's individual claims and dismiss his representative PAGA claims. The Court granted Defendant's motion on September 13, 2022. On November 9, 2022, Plaintiff Olmsted filed his notice of appeal, contending that the Superior Court erred in granting Defendant's motion to dismiss the representative PAGA claims. The Court of Appeals reversed the Superior Court's decision and the Court's order was reversed on October 31, 2023.

On July 18, 2022, Plaintiff Andrew Dat provided notice to the LWDA and Defendant of his intent to seek civil penalties under PAGA. On August 4, 2022 Plaintiff Dat filed a putative class action in Orange County Superior Court, Case No.: 30-2022-01273495-CU-OE-CXC, alleging that Defendant (1) failed to pay minimum wages; (2) failed to pay overtime owed; (3) failed to provide lawful meal periods; (4) failed to authorize and permit rest periods; (5) failed to furnish accurate itemized wage statements; (6) failed to timely pay wages owed upon separation from employment; and (7) failed to reimburse business expenses; and (8) violated the unfair competition law. On September 22, 2022, Plaintiff Dat filed a First Amended Complaint adding a cause of action for PAGA.

On April 4, 2024, Plaintiff Fidel Antonio Munoz filed a putative class action in Los

Angeles County Superior Court, Case No. 24STCV08298, alleging that, during the Class Period, Defendant (1) failed to pay minimum wages; 2) failed to pay overtime owed; (3) failed to provide lawful meal periods; (4) failed to authorize and permit rest periods; (5) failed to pay timely wages during employment; (6) failed to timely pay wages owed upon separation from employment; (7) unlawful deductions; (8) knowingly and intentionally failed to comply with itemized wage statement provisions; and (9) violated the unfair competition law. Plaintiff Munoz also provided notice to the LWDA and Defendant of his intent to seek PAGA penalties for Defendant's violations. On May 2, 2024 Plaintiff Munoz filed a First Amended Complaint adding a cause of action for failure to reimburse necessary expenses. On June 7, 2024, Plaintiff Munoz filed a Second Amended Complaint adding a cause of action for penalties pursuant to PAGA.

Pursuant to the Settlement, Plaintiff Munoz filed a Third Amended Complaint to add Plaintiffs Douglass Olmsted and Andrew Dat as named plaintiffs, and to encompass all the causes of action from the Olmsted and Dat matters. The Third Amended Complaint is the operative complaint for purposes of the Settlement. (Hawkins Decl. ¶¶ 4-14).

III. INVESTIGATION AND MEDIATION

The Parties engaged in significant informal discovery and information exchange prior to mediation. (Id. ¶15). Plaintiff Munoz requested and was provided with a statistically significant sampling of time and wage records for the Class Members during the Class Period, all of his time records and wage statements, personnel file, and various policy documents including collective bargaining agreements. Plaintiff Munoz was also provided with data including the total number of Class Members and Aggrieved Employees, the total number of former Class Members and Aggrieved Employees, and the number of workweeks and pay periods in the Class and PAGA Periods. Plaintiff Munoz was also provided with Defendant's employee handbooks used during the Class Period, policies and training materials related to meal periods, rest periods, the location where employees were supposed to take meals or rest periods, whether employees could leave the premises during breaks, timekeeping, timing of earning and payment of overtime wages, and the calculation of the regular rate for payment of overtime wages, record keeping, payment of wages during employment and at the time of termination, deductions from wages, reimbursements (including any applicable forms or procedures), scheduling and staffing, payment of sick leave and accrual, reporting time wages, and job descriptions for each position worked by the Class Members. (Id.).

The Parties also conducted significant investigation of the facts and law, including, numerous conferences between counsel for the Parties, substantial document production, and review of data necessary to calculate damages. Counsel for the Parties researched the law as applied to the facts regarding Plaintiffs' claims and potential defenses thereto, and the damages and penalties claimed. From the documentation provided, the Parties conducted their own evaluations of the potential recoveries based on the alleged claims. (Id. ¶¶15-16)

On May 16, 2024, the Parties participated in an all-day mediation presided over by mediator Lynn Frank, which was successful in reaching the material terms memorialized in the Agreement to settle the Action. (Id. ¶¶ 17-18)

Plaintiffs and Class Counsel have concluded that the terms of the Settlement are fair, reasonable, adequate, and in the best interests of the Class Members, considering the sharply contested issues involved, the expense and time necessary to litigate the Action through trial and any appeals, the risk of an adverse outcome, the uncertainty of complex litigation, and the substantial benefits to be received by Class Members. (Id. ¶¶ 22-23).

IV. SUMMARY OF THE PROPOSED SETTLEMENT

A. Class Definition

The Class is defined as all persons employed by Defendant in California in a non-exempt position in California during the Class Period. The Class Period is defined as the period starting on August 4, 2018, and continuing through September 13, 2024, and is for identifying Class Members only, and not for defining the periods of the releases applicable to the Released Class Claims. (Ex. 1, §§ 1.5, 1.9, 1.13). Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member. (Ex. 1, §8.5.3).

B. Gross Settlement Amount and Net Settlement Amount

Defendant has agreed to pay the Gross Settlement Amount of $2,800,000 to resolve the Action, and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. (Ex. 1, §§ 1.22, 4.1). The Gross Settlement Amount will be used to pay the Individual Class Payments, Individual PAGA Payments, LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payments and the Administration Expenses Payment. (Ex. 1, § 1.22).

The Net Settlement Amount is the amount to be paid to Participating Class Members as Individual Class Payments after subtracting the following payments from the Gross Settlement Amount, subject to Court approval: (1) Class Representative Service Payments of up to $10,000 each to Plaintiffs Munoz, Olmsted, and Dat ($30,000 total) (Ex. 1, § 3.2.1); (2) Administration Expenses Payment of $23,000 (Ex. 1, §§ 1.3, 4.2.3); (3) Class Counsel Fees Payment of up to $980,000 (Ex. 1, § 4.2.2); (4) Class Counsel Litigation Expenses Payment of up to $47,000.00 (Id.); and (5) PAGA Penalties of $140,000 (Ex. 1, §§ 1.34, 4.2.5).

C. Individual Class Payments and Individual PAGA Payments

Each Participating Class Member will receive an Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period, and (b) multiplying the result by each Participating Class Member's Workweeks. (Ex. 1, § 4.2.4). Individual Class Payments shall be allocated as 20% wages (to be reported on an IRS Form W2); and 80% interest and penalties (to be reported on an IRS Form 1099). (Ex. 1, § 4.2.4.1).

Each Aggrieved Employees will receive an Individual PAGA Payment calculated by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties ($35,000) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. (Ex. 1, § 4.2.5.1).

D. Notice Procedures

The proposed Class Notice provides information regarding the nature of the Action, a summary of the Settlement's terms, the Class and Class Period definitions, the Class Member's

Workweeks worked during the Class Period, the estimated Individual Class Payment and formula for calculating the payment, instructions to submit Requests for Exclusion or Objections and the deadlines, and released claims. (Ex. A to the Settlement Agreement).

Within 14 days after receiving the Class Data, the Administrator will mail the Class Notice to all Class Members via First-Class USPS. (Ex. 1, §8.4.2.). Before mailing the Class Notice, the Administrator will search the National Change of Address Database for updated contact information. (Id.). Any Class Notices returned as non-deliverable on or before the Response Deadline will be sent via First-Class USPS to the forwarding address, and the Administrator will indicate the date of re-mailing on the Notice. (Id.). If no address is provided, the Administrator will attempt to determine the correct address using a skip-trace, or other search, and will perform a single re-mailing (Id.). The "Response Deadline" is 60 calendar days from the initial mailing. (Ex. 1, §§ 1.43, 8.4.4). Class Members to whom a Class Notice is re-mailed shall have 14 additional calendar days beyond the Response Deadline to submit a Request for Exclusion, an Objection, or a dispute. (Id.).

Any Class Member who disputes the accuracy of the number of Workweeks set forth in the Class Notice must provide written notice by the Response Deadline and submit all evidence relating to the dispute to the Administrator. (Ex. 1, §8.6).

Class Members who wish to opt-out from the Settlement must mail a written request for exclusion to the Administrator by the Response Deadline. (Ex. 1, §8.8.2). If more than five percent (5%) of the Class Members opt out, Defendant may, at their election, rescind the Settlement. (Ex. 1, § 10).

To object to the Settlement, a Class Member must not submit a Request for Exclusion and must mail a written objection containing all the required information to the Administrator before the Response Deadline. (Ex. 1, §8.7).

E. Processing of Payments

Within 21 days of Defendant funding of the Gross Settlement Amount, the Administrator will issue payments as provided for in the Settlement. (Ex. 1, § 5.5). For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to Inclusion Matters by Shane's Inspiration (the "Cy Pres Recipient"), a nonprofit disabled children's advocacy and support organization, which qualifies for a cy pres distribution under Civil Procedure Code section 384(b); provided, however, that in the event the total amount of uncashed checks exceeds $50,000, the amount that exceeds $50,000 shall be equally divided and paid to those Class Members who cashed their initial checks, with any uncashed second checks being distributed to the Cy Pres Recipient, and further, if the Cy Pres Recipient is not approved by the Court, the uncashed checks shall be distributed to the California Controller's Unclaimed Property Fund in the name of the Class Member (Ex. 1, § 5.5.3).

F. Releases of Claims

Effective on the date when Defendant fully funds the entire Gross Settlement Amount and all employer payroll taxes owed on the wage portion of the Individual Class Payments, Plaintiffs, Class Members, Aggrieved Employees, and Class Counsel will release claims against all Released Parties as follows:

> Released Class Claims by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Complaint and ascertained in the course of the Action, including claims for (i) failure to pay wages, including unpaid minimum wages and overtime premium pay; (ii) failure to provide meal and/or rest periods in accordance with applicable law, including payments for non-compliant meal and/or rest periods; (iii) failure to correctly calculate the regular rate for overtime pay, payments for non-compliant meal and/or rest periods, and/or paid sick leave; (iv) failure to timely pay wages, both during employment and upon termination of employment; (v) unauthorized and unlawful deductions from wages; (vi) failure to reimburse reasonable and necessary work related expenses; (vii) failure to provide accurate itemized wage statements; (viii) violation of the California Unfair Competition Law; and (ix) all civil and statutory penalties, including PAGA penalties, arising during the period starting on August 4, 2018, and continuing through the date of preliminary court approval of the Settlement ("Class Release Period"). Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Release Period.

(*Id.* §6.2).

Release by Non-Participating Class Members Who Are Aggrieved Employees:
All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Complaint, the PAGA Notice, and ascertained in the course of the Action, including PAGA penalties for (i) failure to pay wages, including unpaid minimum wages and overtime premium pay; (ii) failure to provide meal and/or rest periods in accordance with applicable law, including payments for non-compliant meal and/or rest periods; (iii) failure to correctly calculate the regular rate for overtime pay, payments for non-compliant meal and/or rest periods, and/or paid sick leave; (iv) failure to timely pay wages, both during employment and upon termination of employment; (v) unauthorized and unlawful deductions from wages; (vi) failure to reimburse reasonable and necessary work-related expenses; (vii) failure to provide accurate itemized wage statements, arising during the period starting on May 29, 2019, and continuing through the date of preliminary court approval of the Settlement ("PAGA Release Period"). (*Id.* §6.3).

In addition to the Released Class Claims and Released PAGA Claims, Plaintiffs agreed to a general release, including a waiver of rights under California Code of Civil Procedure Section 1542. (*Id.*, § 6.1.1).

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

A. Class Action Settlements Are Subject to Court Review and Approval Under the California Rules of Court.

The law favors settlements. *Bush v. Superior Court*, 10 Cal.App.4th 1374, 1382 (1992). This is particularly true in class actions. However, a class action may not be dismissed, compromised or settled without Court approval. See Cal. Civ. Code § 1781(f); Cal. R. Ct. 3.769 (a). The procedures for approval of a class action are (1) preliminary approval of the settlement by the Court; (2) notice to Class Members as directed by the Court; and (3) a final approval hearing to inquire into the fairness of the settlement. *See* Cal. R. Ct. 3.769(c), (e)-(f).

The decision to approve a proposed settlement lies within the Court's discretion. *See Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008); *Wershba v. Apple Computer, Inc.,* 91 Cal. App. 4th 224, 234-25 (2001). Nevertheless, in considering a settlement for approval, a court is not to turn the approval hearing "into a trial or rehearsal for trial on the merits…[or] to reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute." *Officers for Justice v. Civil Serv. Comm'n,* 688 F.2d 615, 625 (9th Cir. 1982). The Court's duty is to determine whether the settlement is fair, adequate, and reasonable. *See Dunk v. Ford Motor Co.,* 48 Cal. App. 4th 1794, 1801 (1996) (citing *Officers for Justice,* 688 F.2d. at 625). The Court should consider factors including:

> [T]he strength of plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through 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.

Dunk at 1801. Furthermore, the Court must give "[due] regard to what is otherwise a private consensual agreement between the parties." *Wershba*, 91 Cal. App. 4th at 245. The inquiry must be limited "to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties." *Id.* (citation and internal quotation marks omitted).

A "presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Dunk*, 48 Cal. App. 4th at 1802 (citing Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* ("*Newberg*") § 11.41). As shown below, the settlement falls well within the range of approval because there are no grounds to doubt its fairness.

B. The Settlement is Fair, Reasonable, and Adequate

1. The Settlement is the Result of Arm's-length Negotiations.

The Settlement was the product of extensive arm's length bargaining by the Parties and a full day of mediation. (Hawkins Decl. ¶¶ 17-19). At all times, the negotiations were adversarial and non-collusive. The information exchanged between the Parties allowed them to assess the merits of the claims and defenses and reach a compromise. (Id.). Plaintiffs and Class Counsel have considered the uncertainty and risk of further litigation and the potential outcome. Plaintiffs and Class Counsel have conducted extensive settlement negotiations, including the above-mentioned mediation. Plaintiffs and Class Counsel believe the Settlement is fair, adequate, and reasonable, and it is in the best interests of the Class Members. (Id. ¶¶ 20-23, 44-48).

2. The Extent of Discovery and the Early Stage of the Proceedings Support Settlement.

The Parties thoroughly investigated and evaluated the factual strengths and weaknesses of their respective claims and defenses before reaching the Settlement. (Id. ¶¶ 15-28). The Settlement was reached after extensive investigation and research, substantial exchanges of documents, and a thorough evaluation of class-wide data produced to Class Counsel. (Id.). As such, this litigation has reached the stage where "the Parties certainly have a clear view of the strengths and weaknesses of their cases" sufficient to support the settlement. *In re Warner Commc'ns Sec. Litig.,* 618 F. Supp. 735, 745 (S.D.N.Y. 1985).

3. The Settlement is a Reasonable Compromise of Claims

The Settlement compares favorably to other class settlements in terms of potential recovery. (See *In re MyFord Touch Consumer Litig.,* 2019 WL 1411510, at *10 (citing cases where settlement ranges from 5% to 10% of potential recovery). By way of example, Plaintiffs alleged that Defendant failed to pay for all hours worked, provide first meal breaks or rest breaks as a matter of pattern and practice, failed to pay meal or rest period premiums, and failed to reimburse necessary expenses. Defendant contended that its policies were facially compliant, that employees were prohibited from working off the clock, that meal and rest periods were provided as required by law, that any premiums owed were paid, and that it reimbursed all necessary expenses. Defendant also contended that if Plaintiffs had proceeded with their lawsuits and survived summary judgment, the class and representative action allegations would have been stricken, no class would have been certified in connection with any of their claims, and their actions would have proceeded on an individual basis because, among other reasons, individual issues predominate, Plaintiffs are not similarly situated to the putative class members they purport to represent, and their claims are not manageable on a representative basis.

While Plaintiffs believe in the strength of their allegations and that their claims are appropriate for class certification, certification was far from certain given Defendant's defenses and the state of the law regarding certification. (Id. ¶¶ 20-28, 44-54). The risk that Defendant could defeat certification, defeat the representative claims, and/or prevail on their defenses, warranted a compromise. (Id.). After arms-length negotiations between experienced and informed counsel and with the assistance of a mediator, the Parties agreed to the Gross Settlement Amount of $2,800,000, which is approximately 14.2% of the realistic liability of $19,650,177. (Id. ¶¶ 44-48). As the *Glass* court held:

> In light of the above-referenced uncertainty in the law, the risk, expense, complexity, and likely duration of further litigation likewise favors the settlement. Regardless of how this Court might have rules on the merits of the legal issues, the losing party likely would have appealed, and the parties would have faced the expense and uncertainty of litigation an appeal. "The expense and possible duration of the litigation should be considered in evaluating the reasonableness of [a] settlement." See *In re Mego Financial Corp. Securities Litigation,* (9th Cir. 2000) 213 F.3d 454, 458.

(*Glass v. UBS Fin. Servs.,* (N.D. Cal. Jan. 26, 2007) 2007 WL 221862, at *9). "Generally, unless the settlement is clearly inadequate, its acceptable and approval are preferable to lengthy and expensive litigation with uncertain results," *Ching v. Siemens Indus, Inc.,* (N.D. Cal. June 27, 2014) 2014 WL 2926210, at *4 (quotation omitted). This factor weighs in favor of approval.

4. The Risks Inherent in Continued Litigation Are Great.

To assess a class action settlement, the Court should consider "[t]he strength of plaintiff's case, the risk, expense, complexity, and likely duration of further litigation, [and] the risk of maintaining class action status." *See Dunk* at 1801.

Defendant asserted strong defenses to Plaintiffs' claims that create a possibility that the claims might not be certified or might fail on the merits. Counsel recognized the expense and length of proceedings necessary to continue the litigation through trial and any appeals. Counsel also considered the uncertainty and risk of further litigation, and the difficulties and delays inherent in such litigation. While Plaintiffs believe in the strength of their allegations and that their claims are certifiable, Plaintiffs and Class Counsel have balanced their evaluation of the validity and merit of the asserted claims against potential problems of proof, the legal standards governing litigation of class claims, uncertainty of obtaining and maintaining class certification, the potential for appeals, and the expense and burden of prolonged litigation. Based on Class Counsel's evaluation, the Settlement is fair, adequate, and reasonable and in the best interest of the Class, including Plaintiffs.

5. The Fairness of the Distribution to Class Members Also Supports Approval.

The Settlement treats all Class Members equally, providing no preferential treatment for the named Plaintiffs or any segment of the Class. The Parties have allocated Settlement Payments to the Class Members according to the number of Workweeks that each Class Member worked during the Class Period versus the Total Workweeks worked by all Class Members during the Class Period. (Settlement, §4.2.4).

6. Class Counsel Are Experienced in Similar Litigation.

The view of the attorneys actively conducting the litigation "is entitled to significant weight" in deciding whether to approve the settlement. *Fisher Bros. v. Cambridge-Lee Indus, Inc.,* 630 F. Supp. 482, 488 (E.D. Pa. 1985); *Ellis v. Naval Air Rework Facility,* 87 F.R.D. 15, 18 (N.D. Cal. 1980), aff'd, 661 F. 2d. 939 (9th Cir. 1981); *Boyd v. Bechtel Corp.,* 485 F. Supp. 610, 616-17 (N.D. Cal. 1979). Class Counsel are experienced in wage-and-hour class actions. (Hawkins Decl. ¶ 60).

Counsel negotiated this Settlement at arm's length, and believe this is a fair and reasonable settlement in light of the complexities of the case, the state of the law, and uncertainties of class certification and litigation. Given the risk inherent in litigation and the defenses asserted, this settlement is fair, adequate, and reasonable and in the best interests of the Class Members, and should be preliminarily approved. (Hawkins Decl. ¶ 56).

VI. CONDITIONAL CERTIFICATION OF THE CLASSES IS APPROPRIATE

California Rule of Court 3.769(d) provides that the Court may make an order approving certification of a provisional class at preliminary approval. Trial courts should use a "lesser standard of scrutiny" for determining the propriety of certifying a settlement class, as opposed to a litigation class. *Dunk*, 48 Cal. App. 4th at 1807 n.19. Because no trial is anticipated in a settlement, case management issues need not be confronted, and the trial court's fairness review of the settlement protects the interests of the class members. Here, for the purposes of this settlement, the Parties ask this Court to provisionally certify the Class.

A. Numerosity and Ascertainability

Numerosity is met if a proposed class is so large that joinder of all members would be impracticable. *See* Cal. Code Civ. Proc. § 382. A proposed class is ascertainable if the class members can be objectively identified and given notice of the litigation without unreasonable time or expense. *See Medrazo v. Honda of N. Hollywood*, 166 Cal. App. 4th 89, 101 (2008). The class size of approximately 3,750 Class Members is sufficiently numerous to warrant conditional class certification, and the proposed Class is ascertainable as all of the Class Members worked for Defendant and can be identified through employee files and payroll records. (Id. ¶¶ 47, 49).

B. Well-Defined Community of Interest

1. Commonality.

To justify certification, the class proponent must show that questions of law or fact common to the class predominate over the questions affecting the individual members. *See Arenas v. El Torito Rests, Inc.,* 183 Cal. App. 4th 723, 732 (2010) (citing *Washington Mut. Bank v. Superior Court,* 24 Cal. 4th 906, 913 (2001)). The claims of Plaintiffs and the Class Members all flow from the same facts and legal claims, i.e., that Defendant's policies, practices, and procedures including but not limited unlawful rounding resulted in Defendant's failure to pay wages, failure to provide meal periods, failure to provide rest periods, failure to timely pay wages during employment, failure to provide accurate wage statements, and engaging in unfair competition. Under these circumstances, the commonality requirement is satisfied. (Id. ¶ 46).

2. Typicality

Typicality "focuses on whether there exists a relationship between the plaintiffs' claims and the claims alleged on behalf of the class." *Newberg,* §3.13. The typicality requirement is met, as the proposed Class Representative and Class Members all claim Defendant committed similar violations based upon similar conduct, policies and practice and seek the same remedies. Plaintiffs contend that their claims are typical of the Class because they arise from the same factual basis and legal theories as those of the Class Members. (Hawkins Decl. ¶ 48).

3. Adequacy of Representation

Class Representatives must establish that they will adequately represent the proposed class. *See Barboza v. West Coast Digital GSM, Inc.,* 179 Cal. App. 4^{th} 540, 546 (2009). Class Counsel is not aware of any interests of the Class Representatives which are adverse to the interests of the Class. (Hawkins Decl. ¶ 58; Munoz Decl. ¶ 19). Adequacy of counsel may be established by the fact that counsel are experienced practitioners. *See Local Joint Exec. Bd. Of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.,* 244 F.3d 1152, 1162 (9^{th} Cir. 2001). Class Counsel are experienced in wage-and-hour litigation (Hawkins Decl. ¶ 60; Hollis Decl. ¶¶ 17-23; Ardestani Decl. ¶¶ 3-11).

VII. THE COURT SHOULD APPOINT PHOENIX SETTLEMENT ADMINISTRATORS AS THE ADMINISTRATOR

The parties propose that the Court appoint Phoenix Settlement Administrators ("Phoenix") to serve as the Claims Administrator. (Settlement ¶ 1.2). Phoenix submitted an estimate for its services not to exceed $23,000. (Lawrence Decl. ¶ 16; Ex. B).

A. The Notice to be Provided to Class Members Is Sufficient.

California statutory and case law vests the Court with broad discretion in fashioning an appropriate notice program. What constitutes adequate notice will depend on the circumstances of each case, and such efforts and their costs must be proportional to the magnitude of the claims. The notice plans here satisfies all due process requirements. The Class Notice identifies the Parties, describes the action and class, summarizes the proceedings and terms of the Settlement in an informative and coherent manner, and is accurate, objective, and understandable to Class Members (Hawkins Decl. ¶¶ 34-39, Ex. A to the Settlement). It clearly states the Settlement is not an admission of liability by Defendant, the Court has not ruled on the merits, and the final settlement approval decision has yet to be made (Id.). The Class Notice meets the applicable legal standards since it apprises the Class Members of the terms of the proposed settlement and of the options open to objecting class members. (*Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4^{th} 224, 251 [citation omitted]; see Cal. R. Ct., Rule 3.766, subd. (d).)

B. The Manner of Supplying Notice to Class Members Is Sufficient.

There is no statutory or due process requirement that all class members actually receive notice of the settlement. Rather, "[t]he notice given should have a reasonable chance of reaching a substantial percentage of the class members…." *Cartt v. Super. Ct.* (1975) 50 Cal.App.3d 960, 973. This is satisfied by mailing the Class Notice by First-Class USPS to all Class Members on the Class list (Settlement §7.4.2).

VIII. CONCLUSION

Plaintiffs request that the Court preliminarily approve the Settlement and enter an order: (1) provisionally certifying the Class under Code of Civil Procedure section 382 and California Rule of Court 3.769(c) for settlement purposes; (2) preliminarily approving the Settlement; (3) approving as to form the Class Notice and ordering that the Class Notice be distributed to all Class Members; (4) appointing Plaintiffs Fidel Antonio Munoz, Douglass Olmsted, and Andrew Dat as the Class Representatives; (5) appointing Phoenix Settlement Administrators as the Settlement Administrator; (6) appointing James Hawkins APLC, GrahamHollis APC, and Crosner Legal, PC as Class Counsel; and (7) setting this matter for a hearing on the issues of final approval of the proposed Settlement, approval of the Class Representative Service Payments, approval of Class Counsel's attorneys' fees and costs, and approval of the administration fees and costs.

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