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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ENRIQUEZ VASQUEZ and JUAN
ANDRES RUIZ on behalf of a
class of similarly situated
employees,

Plaintiffs,

v.

COAST VALLEY ROOFING, INC., dba
COAST ROOFING, and FRANCIS
DOMINIC GIANGROSSI,

Defendants.

1:07-CV-00227 OWW DLB

MEMORANDUM DECISION AND ORDER
GRANTING PLAINTIFFS' REQUEST FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT (DOC. 52).

I. INTRODUCTION

Plaintiffs Enriquez Vasquez and Juan Andres Ruiz brought this action on behalf of themselves and approximately 150 current and former roofing workers employed by Defendants Coast Roofing, Inc. ("Coast") and Francis Dominic Giangrossi, alleging violations of federal and state wage-and-hour laws. *See* First Amended Class Action Complaint ("FAC"), filed Sept. 19, 2007, Doc. 23. Before the court for decision is Plaintiffs' motion for preliminary approval of the terms of a negotiated Class Action Settlement. Doc. 52. No opposition to the motion has been received.

1 II. FACTUAL BACKGROUND

2 A. Summary of the Litigation.

3 The FAC alleges that Coast failed to pay overtime and minimum
4 wages; failed to pay wages due at termination of employment; failed to
5 provide all legally required meal periods and rest breaks; failed to
6 provide accurate, itemized employee wage statements; and failed to
7 compensate employees for travel time and mileage. The FAC sought to
8 certify a class composed of Plaintiffs and similarly situated
9 individuals and to recover back wages, interest, penalties, and
10 attorneys' fees and costs from Defendants.
11

12 Plaintiffs' counsel reviewed employee records gathered pursuant
13 to pre-litigation non-discovery methods provided by California Labor
14 Code section 226, interviewed numerous witnesses, and reviewed
15 hundreds of pages of documents from employees before filing the
16 complaint. Mallison Decl., Doc. 54, at ¶¶ 36-38. After the complaint
17 was filed, Plaintiffs conducted substantial discovery and non-
18 discovery investigation regarding class certification and the merits
19 of their claims. *Id.*
20

21 B. Summary of the Settlement.

22 1. The Gross Settlement Payment.

23 Under the Settlement, Coast will make a Gross Settlement Payment
24 of \$300,000. This payment will cover Settlement Shares to be paid to
25 Class Members who submit valid claims; the employer share of payroll
26 taxes on the Settlement Shares; a \$10,000 payment to the California
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1 Labor and Workforce Development Agency for its share of the settlement
2 of civil penalties; the Settlement Administrator's reasonable fees and
3 expenses (estimated to be less than \$25,000); and (subject to court
4 approval) payments to Plaintiffs, in addition to their Settlement
5 Shares, of \$5,000 each in compensation of their services as Class
6 Representatives and payments to Class Counsel of up to \$100,000 for
7 their reasonable attorneys' fees and up to \$10,000 in expenses. See
8 Settlement Agreement ("Settlement") § III.A-C, attached to Mallison
9 Decl. at Ex. 1, Doc. 54-2. There will be no reversion of the Gross
10 Settlement Payment to Coast.
11

12
13 2. Payment of Settlement Shares.

14 After the other amounts are deducted, the Gross Settlement Amount
15 (termed the "Net Settlement Amount") will be distributed as Settlement
16 Shares to all Class Members who submit valid claims, based upon the
17 following allocation formula:

18 The Settlement Share for each Claimant will be based on (a)
19 that Claimant's total number of Months of Employment during
20 the Class Period (b) divided by the aggregate number of
21 Months of Employment of all Participating Class Members
22 during the Class Period (with the division rounded to four
decimal places) (c) multiplied by the value of the Net
Settlement Amount.

23 Settlement § III.D.1. The formula relies upon information readily
24 available from Coast's records and is commonly used in wage-and-hour
25 cases. Mallison Decl. at ¶¶ 41-42.
26

27 3. Distribution of Unclaimed Funds and Uncashed Checks.

28 In the event that not all Class Members submit claims, the

1 residual will be redistributed to those Class Members who do submit
2 valid claims. Settlement § III.D.3. In the event that checks issued
3 to Class Members are not cashed, these monies will be donated to two
4 public interest organizations on a 50%/50% basis: (1) the California
5 Rural Legal Assistance; and (2) the Boys and Girls Club of
6 Bakersfield. *Id.* § III.F.10. Donation of the residual to these
7 public interest organizations that serve low-income workers is
8 appropriate. *See* Mallison Decl. at ¶43.

10
11 4. Scope of the Release.

12 The Settlement provides that all Participating Class Members
13 release Defendants as follows:

14 As of the date of the Judgment, all Participating Class
15 Members hereby fully and finally release Coast, and its
16 parents, predecessors, successors, subsidiaries, affiliates,
17 and trusts, and all of its employees, officers, agents,
18 attorneys, stockholders, fiduciaries, other service
19 providers, and assigns, from any and all claims, known and
20 unknown, for or related to all claims based on or arising
21 from the allegations that they were or are improperly
22 compensated under federal, California, or local law (the
23 "Class's Released Claims"). The Class's Released Claims
include all such claims for alleged unpaid wages, including
overtime compensation, missed meal-period and rest-break
wages or penalties, and interest; related penalties,
including, but not limited to, recordkeeping penalties, pay-
stub penalties, minimum-wage penalties, missed meal-period
and rest-break penalties, and waiting-time penalties; and
costs and attorneys' fees and expenses.

24 Settlement § III.G.2.

25
26 5. Objections and Opt-Out Process

27 Any Class Member who so wishes may object to or comment on the
28 Settlement, or may elect not to participate in the Settlement. The

1 Class Notice fully explains the objection/comment and opt-in
2 procedures. Settlement § III.F.4.

3
4 6. Termination of Settlement.

5 The Settlement provides for confirmatory discovery to be
6 conducted during the approval process. Plaintiffs reserve the right
7 to void the Settlement if this confirmatory discovery reveals any
8 substantial variance from previous discovery or other factual
9 representations made by defendants and relied upon by Plaintiffs as
10 the basis for the Settlement. Plaintiffs do not anticipate any such
11 termination of the settlement, but are conducting this confirmatory
12 discovery to ensure the fairness of the Settlement for the class and
13 to fully carry out their obligations to the class and the Court.

14
15 7. Class Representative Payments; Class Counsel Attorneys' Fees
16 Payment and Class Counsel Litigation Expenses Payment.

17 By a motion to be filed prior to the Final Approval Hearing,
18 Plaintiffs and their counsel will seek (and Coast has agreed not to
19 oppose), awards to Plaintiffs of Class Representative Payments of
20 \$5,000 each, in addition to their Settlement Shares, in compensation
21 for their services as Class Representatives; and a Class Counsel
22 Attorneys' Fees Payment of not more than \$100,000 (or 33-1/3% of the
23 Gross Settlement Amount) and a Class Counsel Litigation Expenses
24 Payment of not more than \$10,000. Settlement § III.B.1-2. The exact
25 amounts requested, and their justification, will be detailed in a
26 motion, brief, and declaration to be provided in conjunction with the
27
28

1 final approval of the settlement.

2
3 III. DISCUSSION

4 A. Preliminary Approval of a Settlement Class is Appropriate.

5 In order to approve a class action settlement, a district court
6 must first make a finding that a class can be certified. *See, e.g.,*
7 *Molski v. Gleich*, 318 F.3d 937, 943, 946-50 (9th Cir. 2003). "When,
8 as here, the parties have entered into a settlement agreement before
9 the district court certifies the class, reviewing courts must pay
10 undiluted, even heightened, attention to class certification
11 requirements." *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir.
12 2003).

13
14 Pursuant to Federal Rule of Civil Procedure 23(c)(1), a court may
15 "make a conditional determination of whether an action should be
16 maintained as a class action, subject to final approval at a later
17 date." *Fry v. Hayt, Hayt & Landau*, 198 F.R.D. 461, 466 (E.D. Pa.
18 2000). Conditional approval of the class is appropriate where the
19 plaintiff establishes the four prerequisites of Federal Rule of Civil
20 Procedure 23(a) -- (1) numerosity, (2) commonality, (3) typicality,
21 and (4) adequacy of representation -- as well as one of the three
22 requirements of Rule 23(b). *See Fry*, 198 F.R.D. at 466.

23
24 Here, the proposed class is comprised of all individuals who have
25 been employed by Coast in California as non-exempt roofing workers
26 during the period from January 31, 2003 to July 31, 2009. There are
27 approximately 150 Class Members.
28

1 1. Numerosity.

2 A proposed class must be "so numerous that joinder of all members
3 is impracticable." Fed. R. Civ. P. 23(a)(1). The numerosity
4 requirement demands "examination of the specific facts of each case
5 and imposes no absolute limitations." *General Tel. Co. of the*
6 *Northwest, Inc. v. EEOC*, 446 U.S. 318, 330 (1980). Courts have
7 routinely found the numerosity requirement satisfied when the class
8 comprises 40 or more members. *Ansari v. New York Univ.*, 179 F.R.D.
9 112, 114 (S.D.N.Y. 1998). Here, the presence of approximately 150
10 similarly situated Class Members satisfies the numerosity requirement.
11

12 Plaintiffs also must establish impracticability of joinder. A
13 court should consider "not only the class size but other factors as
14 well, including the geographic diversity of class members, the ability
15 of individual members to institute separate suits, and the nature of
16 the underlying action and the relief sought." *See, Nat'l Ass'n of*
17 *Radiation Survivors v. Walters*, 111 F.R.D. 595, 599 (N.D. Cal. 1986).
18 The limited size of any individual plaintiff's recovery is also
19 relevant. *Edmondson v. Simon*, 86 F.R.D. 375, 379 (N.D. Ill. 1980).
20 Here, where the potential recovery by any individual plaintiff is
21 relatively small, individual members of the class would likely be
22 unwilling or unable to bring institute separate suits. Moreover, the
23 filing of individual suits by 150 separate plaintiffs would create and
24 unnecessary burden on judicial resources.
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1 2. Commonality.

2 Rule 23(a) also demands "questions of law or fact common to the
3 class." It does not require that all questions of law or fact be
4 common to every single member of the class. To satisfy the
5 commonality requirement, plaintiffs need only point to a single issue
6 common to the class. *Dukes v. Wal-Mart, Inc.*, 474 F.3d 1214, 1225
7 (9th Cir. 2007); *Slaven v. BP Am., Inc.*, 190 F.R.D. 649, 655 (C.D.
8 Cal. 2000). Commonality is generally satisfied where, as in this
9 case, "the lawsuit challenges a system-wide practice or policy that
10 affects all of the putative class members." *Armstrong v. Davis*, 275
11 F.3d 849, 868 (9th Cir. 2001); *LaDuke v. Nelson*, 762 F.2d 1318, 1332
12 (9th Cir. 1985). Differences in the ways in which these practices
13 affect individual members of the class do not undermine the finding of
14 commonality. *Armstrong*, 275 F.3d at 868 (finding commonality
15 requirement satisfied despite individual class members having
16 different disabilities, since all suffered similar harm as a result of
17 defendant's actions).

18 Here, for purposes of the Settlement only, the parties agree that
19 common questions of both fact and law exist regarding Coast's alleged
20 failure to abide by federal and state wage-and-hour law, including:
21

- 22
- 23 • whether Coast failed to provide roofing workers with
24 required meal periods;
 - 25 • whether Coast failed to pay roofing workers wages for
26 meal periods during which they remained on duty;
 - 27 • whether Coast authorized and permitted the roofing
28 workers to take required rest periods;
 - whether Coast failed to pay roofing workers an

1 additional hour of wages for missed meal periods and
2 rest breaks;

- 3 • whether Coast failed to pay all legally required
4 minimum wages and overtime compensation to hourly
5 production workers;
- 6 • whether hourly production workers are owed waiting time
7 penalties because Coast allegedly willfully failed to
8 pay them additional wages for missed meal periods and
9 rest breaks, and for meal periods taken during which
10 they remained on duty, upon the termination of their
11 employment; and
- 12 • whether Coast's business practices violated Business
13 and Professions Code section 17200 et seq.
- 14 • whether Coast's failed to pay for travel time and
15 mileage to roofing workers.

16 These common questions of law or fact are sufficient to satisfy the
17 commonality requirement.

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3. Typicality.

Rule 23(a)(3) demands "the claims or defenses of the
representative parties are typical of the claims or defenses of the
class." *Armstrong*, 275 F.3d at 868. "Typicality ... is said ... to
be satisfied when each class member's claim arises from the same
course of events, and each class member makes similar legal arguments
to prove the defendant's liability." *Id.* Under the rule's
"permissive standards," representative claims are typical if they are
"reasonably co-extensive with those of absent class members; they need
to be substantially identical." *Hanlon v. Chrysler Corp.*, 150 F.3d
1011, 1020 (9th Cir. 1998). Plaintiffs' claims are essentially
identical to those of the class as whole, as they are all roofing
workers who were paid under the same pay practices. The typicality

1 requirement is satisfied.

2
3 4. Adequacy of Representation.

4 The final Rule 23(a) prerequisite is satisfied if "the
5 representative parties will fairly and adequately protect the
6 interests of the class." Fed. R. Civ. P. 23(a)(4). "The proper
7 resolution of this issue requires that two questions be addressed: (a)
8 do the named plaintiffs and their counsel have any conflicts of
9 interest with other class members and (b) will the named plaintiffs
10 and their counsel prosecute the action vigorously on behalf of the
11 class?" *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 462 (9th
12 Cir. 2000). The adequacy of representation requirement is met here
13 because Plaintiffs have the same interests as the remaining members of
14 the Settlement Class, i.e. obtaining payment for wages unlawfully
15 withheld; there is no apparent conflict between the named Plaintiffs'
16 claims and those of the other Class Members; and Plaintiffs are
17 represented by experienced and competent counsel who has experience in
18 litigating over 40 wage and hour class action cases.
19
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21 5. Rule 23(b)(3).

22 Having satisfied the prerequisites set forth in Rule 23(a),
23 Plaintiffs must also satisfy one of the three provisions of Rule
24 23(b). The parties agree for purposes of the Settlement only that
25 certification of the Class is appropriate under Rule 23(b)(3) because
26 "questions of law or fact common to the members of the class
27 predominate over any questions affecting only individual members,
28

1 and...a class action is superior to other available methods for the fair
2 adjudication of the controversy." Fed. R. Civ. P. 23(b)(3).

3
4 B. Conditional Certification of an FLSA Collective Action.

5 Section 216(b) of the FLSA allows employees to represent
6 similarly situated co-workers in an action against their employer for
7 failure to pay wages owed. 29 U.S.C. § 216(b) ("An action to recover
8 the liability prescribed in either of the preceding sentences may be
9 maintained against any employer ... by any one or more employees for
10 and in behalf of himself or themselves and other employees similarly
11 situated."). The decision to certify an FLSA collective action is
12 within the discretion of the Court. *Edwards v. City of Long Beach*,
13 467 F. Supp. 2d 986, 989 (C.D. Cal. 2006). The FLSA does not define
14 the term "similarly situated," and the Ninth Circuit Court of Appeals
15 has not construed it. *Singleton v. Adick*, 2009 WL 3710717, *4 (D.
16 Ariz. Nov. 2, 2009).

17
18 *Singleton* succinctly summarized the relevant analytical approach:

19
20 Courts have taken at least three different approaches to
21 analyzing the issue: "(1) a two-tiered case-by-case
22 approach, (2) the incorporation of the requirements of Rule
23 23 of the current Federal Rules of Civil Procedure, or (3)
24 the incorporation of the requirements of the pre-1966
25 version of Rule 23 for 'spurious' class actions." [*Wood v.*
26 *Trivita, Inc.*, 2009 WL 2046048 at *2 (D. Ariz. Jan. 22,
2009).] The majority of courts have adopted the two-tiered
27 approach. *See, e.g., Hipp v. Liberty Nat'l Life Ins. Co.*,
28 252 F.3d 1208, 1219 (11th Cir. 2001); *Edwards*, 467 F. Supp.
2d at 990; *Hutton v. Bank of America*, 2007 WL 5307976 at *1
(D. Ariz. March 31, 2007)....

Under the two-tiered approach, during the early stages of
litigation, the Court evaluates the case under a lenient
standard and may grant conditional certification. *Hipp*, 252

1 F.3d at 1217. The Court then reevaluates, usually prompted
2 by a motion for decertification, the "similarly situated"
3 question at a later stage, once discovery has produced
4 sufficient information regarding the nature of the claims.
5 *Id.* at 1217-18.

6 At the early stage, or the "notice stage," the Court makes
7 the "similarly situated" decision based on the pleadings and
8 any Declarations that have been submitted. *Id.* at 1218
9 (citing *Mooney v. Aramco Servs. Co.*, 54 F.3d 1207, 1213-14
10 (5th Cir. 1995)). Because the Court does not have much
11 evidence at this stage, the Court uses a fairly lenient
12 standard. *Id.* The second determination, under a stricter
13 standard, is based on much more information, which makes a
14 factual determination possible. *Id.*; *Wood*, 2009 WL 2046048
15 at *3. At the second stage, the Court reviews several
16 factors, including: (1) the disparate factual and employment
17 settings of the individual plaintiffs; (2) the various
18 defenses available to defendant that appear to be individual
19 to each plaintiff; and (3) fairness and procedural
20 considerations. *Thiessen v. Gen. Elec. Capital Corp.*, 267
21 F.3d 1095, 1103 (10th Cir.2001). At all times, Plaintiffs
22 have the burden of proving they meet the "similarly
23 situated" requirement. *See Hipp*, 252 F.3d at 1217.

24 *Singleton*, 2009 WL 3710717, *4.

25 Here, at the preliminary stage of FLSA collective action
26 certification, it is sufficient that Plaintiffs and Class Members
27 allege that Coast had a common practice of failing to pay all legally
28 required minimum wages and overtime compensation to hourly production
workers. Subject to final approval at a later date, conditional
certification of a settlement class under the FLSA is appropriate.

29 C. Preliminary Approval of the Settlement Is Appropriate.

30 "The court must approve any settlement ... of the claims ... of a
31 certified class." Fed. R. Civ. P. 23(e)(1)(A). The court may approve
32 a settlement only after a hearing and on finding that it is fair,
33 reasonable, and adequate. Fed. R. Civ. P. 23(e)(1)(C). Such approval

1 is required to make sure that any settlement reached is consistent
2 with plaintiffs' fiduciary obligations to the class. *See Ficalora v.*
3 *Lockheed Cal. Co.*, 751 F.2d 995, 996 (9th Cir. 1985). The court also
4 serves as guardian for the absent class members who will be bound by
5 the settlement, and therefore must independently determine the
6 fairness of any settlement. *Id.* However, the district court's role
7 in intruding upon what is otherwise a private consensual agreement is
8 limited to the extent necessary to reach a reasoned judgment that the
9 agreement is not the product of fraud or collusion between the
10 negotiating parties, and that the settlement, taken as a whole, is
11 fair, reasonable, and adequate to all concerned. *FDIC v. Alshuler*, 92
12 F.3d 1503, 1506 (9th Cir. 1996). Therefore, the settlement hearing is
13 not to be turned into a trial or rehearsal for trial on the merits.
14 *Officers for Justice v. Civil Service Com.*, 688 F.2d 615, 625 (9th
15 Cir. 1982). Ultimately, the district court's determination is nothing
16 more than an amalgam of delicate balancing, gross approximations, and
17 rough justice. *Id.*

20 In determining whether a settlement agreement is fair, adequate,
21 and reasonable to all concerned, a district court may consider some or
22 all of the following factors: (1) the strength of the Plaintiff's case
23 (2) the risk, expense, complexity, and likely duration of further
24 litigation; (3) the risk of maintaining class action status throughout
25 the trial; (4) the amount offered in settlement; (5) the extent of
26 discovery completed; (6) the stage of the proceedings; (7) the views
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1 and experience of counsel; (8) any opposition by class members; (9)
2 the presence of a governmental participant. *Linney v. Cellular Alaska*
3 *Pshp.*, 151 F.3d 1234,1242 (9th Cir.1998). This list of factors is not
4 exclusive and the court may balance and weigh different factors
5 depending on the circumstances of each case. *Torrisi v. Tucson Elec.*
6 *Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993). In addition, where the
7 payment of attorney's fees is also part of the negotiated settlement,
8 the fee settlement must be evaluated for fairness in the context of
9 the overall settlement. *Kinsely v. Network Assocs.*, 312 F.3d 1123,
10 1126 (9th Cir. 2002).

11
12 Judicial proceedings under Rule 23, Federal Rules of Civil
13 Procedure, have led to defined procedures and specific criteria for
14 settlement approval in class action settlements, described in the
15 Manual for Complex Litigation, Third (Fed. Judicial Center 1995)
16 ("Manual") § 30.41). The Manual's settlement approval procedure
17 describes three distinct steps:
18

- 19 (1) Preliminary approval of the proposed settlement at an
20 informal hearing;
- 21 (2) Dissemination of mailed and/or published notice of the
22 settlement to all affected Class Members; and
- 23 (3) A "formal fairness hearing," or final settlement
24 approval hearing, at which Class Members may be heard
25 regarding the settlement, and at which evidence and argument
26 concerning the fairness, adequacy, and reasonableness of the
27 settlement may be presented.

28 *Id.* § 30.41.

Preliminary approval of a settlement and notice to the proposed
class is appropriate: "[i]f [1] the proposed settlement appears to be

1 the product of serious, informed, noncollusive negotiations, [2] has
2 no obvious deficiencies, [3] does not improperly grant preferential
3 treatment to class representatives or segments of the class, and [4]
4 falls with the range of possible approval...." *In re Tableware*
5 *Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007)(citing
6 Manual for Complex Litigation, Second § 30.44 (1985)). "In addition,
7 the court may find that the settlement proposal contains some merit,
8 is within the range of reasonableness required for a settlement offer,
9 or is presumptively valid." *Id.* (citing Newberg on Class Actions §
10 11.25 (1992)).
11

12
13 1. The Settlement Was the Product of Informed, Non-Collusive
14 Negotiations.

15 The Settlement was reached after informed, arm's length
16 negotiations between the parties. Both parties, through independent
17 counsel of their choice, conducted extensive investigation and
18 discovery allowing them to assess the strengths and weaknesses of the
19 case. As such, the Settlement is the product of non-collusive
20 negotiations. See Mallison Decl. at ¶¶ 48-56.
21

22 2. The Proposed Settlement Has No "Obvious Deficiencies."

23 The settlement provides for a payment of \$300,000.00 by Coast, a
24 substantial recovery given the relatively small size of the class (150
25 members) and the limited nature of the alleged hourly wage violations
26 at issue. The average settlement share is approximately \$1000.00.
27 All Settlement Shares to be paid under the Settlement are determined
28

1 by the number of months each Class Member worked in a Covered
2 Position. The provision for unclaimed funds to be redistributed to
3 Class Members on a pro-rata and uncashed checks donated to two worthy
4 charitable concerns is appropriate and ensures that all of the net
5 proceeds of the settlement are directed at class members to the extent
6 administratively possible.
7

8 The Class Representative Payments (of \$5000.00 each) and the
9 Class Counsel Attorneys' Fees Payment are appropriate, based on their
10 efforts and work by the attorneys, and will nevertheless be subject to
11 court approval at a later stage. Finally, the expected Settlement
12 Administrator's fees and costs of less \$20,000 are consistent with
13 wage-and-hour settlements of this type and size. Mallison Decl. at
14 ¶48-56.
15

16 3. The Settlement Falls Well Within the Range of Possible
17 Approval.

18 To evaluate the "range of possible approval" criterion, which
19 focuses on "substantive fairness and adequacy," "courts primarily
20 consider plaintiffs' expected recovery balanced against the value of
21 the settlement offer." *In re Tableware Antitrust Litig.*, 484 F. Supp.
22 2d at 1080. The Settlement confers a substantial benefit on the Class
23 Members, while proceeding with litigation imposes significant risks.
24

25 Although Plaintiffs conducted substantial discovery and
26 investigation to corroborate their claims, and will have access to
27 confirmatory discovery as part of the Settlement agreement, Coast
28 vigorously contests liability. The primary cause of action in this

1 case revolves around the provision of meal periods. However, the
2 extent of an employer's obligation to provide meal periods under
3 California law is currently before the California Supreme Court, *see*
4 *Brinker Restaurant Corp. v. Superior Court (Hohnbaum)*, 165 Cal. App.
5 4th 25 (2008) (review granted)), and resolution of the issue cannot be
6 predicted with certainty.
7

8 Moreover, even if Plaintiffs were to prevail, they would be
9 required to expend considerable additional time and resources
10 potentially outweighing any additional recovery obtained through
11 successful litigation. At the least, continued litigation will delay
12 payment to the Class.
13

14 Finally, as part of the Settlement, the Class Members will be
15 deemed to have released all those claims "based on or arising from the
16 allegations that they were or are improperly compensated under
17 federal, California, or local law. These released claims
18 appropriately track the breadth of Plaintiffs' allegations in the
19 action and the settlement does not release unrelated claims that class
20 members may have against defendants. The Release also protects class
21 members against any complaint related counter or cross-claims, if any,
22 that defendants may have against plaintiffs.
23

24 Preliminarily, the Settlement is fair, reasonable, and adequate
25 and is in the best interest of the Settlement Class in light of all
26 known facts and circumstances, including the risk of the significant
27 delay.
28

1 D. The Proposed Notice, the Claim Form, the Form of Election Not to
2 Participate, and the Notice Plan Are Fair and Adequate.

3 "Adequate notice is critical to court approval of a class
4 settlement under Rule 23(e)." *Hanlon*, 150 F.3d at 1025. A class
5 action settlement notice "is satisfactory if it generally describes
6 the terms of the settlement in sufficient detail to alert those with
7 adverse viewpoints to investigate and to come forward and be heard."
8 *Churchill Village, LLC v. General Electric*, 361 F.3d 566, 575 (9th
9 Cir. 2004)(internal citation and quotation omitted).

10 Here, the proposed Class Notice, Settlement Exh. B, and the
11 manner of notice agreed upon by the parties, *Id.* § III.E.2., is "the
12 best notice practicable," as required under Federal Rule of Civil
13 Procedure 23(c)(2)(B). All Class Members can be identified and the
14 Class Notice and the related materials (the Claim Form, Settlement
15 Exh. C, and the form of Election Not to Participate in Settlement, *id.*
16 Exh. D) will be mailed directly to each Class Member. The Class
17 Notice adequately informs Class Members of the nature of the
18 litigation, the essential terms of the Settlement, and how to make a
19 claim, object to or comment on, or elect not to participate in the
20 Settlement. Further, the Class Notice identifies Class Counsel,
21 specifies the amounts of the Class Representative Payments, Class
22 Counsel Attorneys' Fees Payment, and Class Counsel Litigation Expenses
23 Payment that Plaintiffs and Class Counsel will seek, and explains how
24 to obtain additional information regarding the action and the
25 Settlement.
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1 Within 14 days after preliminary approval of the Settlement,
2 Coast will provide the Settlement Administrator with a database
3 containing the name and current or last known address of each Class
4 Member, as well as other data necessary to calculate Settlement Shares
5 and administer the Settlement. Settlement § III.E.2.a. The Class
6 Notice and other materials will be mailed by the Settlement
7 Administrator within 14 days following Coast's delivery of the Class
8 Members' data. *Id.* § III.E.2.b. The Settlement Administrator also
9 will send a reminder notice fourteen days before the deadline for
10 Class Members to submit claims. *Id.* § III.E.2.e. The Settlement
11 Administrator will use the National Change of Address database to
12 locate any Class Members whose Notices are returned as undeliverable.
13 *Id.* § III.D. In addition, the Settlement Administrator will publish
14 notice of the Settlement in newspaper(s) of general circulation in
15 area(s) and language(s) designed to reach potential class members.

16
17
18 Not later than when the parties file their motion for final
19 approval of the Settlement, the Settlement Administrator will submit a
20 declaration describing efforts made to locate all Class Members. *Id.*,
21 § III.E.2.f.

22 These procedures provide the best possible notice to the Class
23 Members.

24
25 **E. Appointment the Settlement Administrator.**

26 The parties have agreed upon and propose that the Court appoint
27 Rust Consulting, Inc., to serve as the Settlement Administrator. Rust
28

1 Consulting is experienced in administering wage-and-hour class action
 2 settlements, and has bid its fees and costs for this Settlement at
 3 under \$25,000. Mallison Decl., ¶40, Exh. 5.
 4

5 **F. Proposed Schedule.**

Date	Event
11/16/09	Preliminary Approval hearing (all dates that follow assume this date)
11/30/09	Coast to provide to Settlement Administrator with an electronic data base containing Class Member contact information and data necessary to calculate settlement shares (14 days after Preliminary Approval)
12/10/09	Settlement Administrator to mail Notice Packets to all Class Members (10 days after receiving Class Member information)
12/28/09	Date for Settlement Administrator to contact Class Members who have not submitted Claim Forms to remind them of the of the upcoming deadline
1/9/10	Last day for Class Members to comment on or object to Settlement (30 days after mailing of Notice Packets), to mail valid Elections Not to Participate in Settlement, and to mail valid claims for Settlement Shares (30 days after mailing of Notice Packets)
1/14/10	Last day for Settlement Administrator to report to parties on Class Members who have elected not to participate in Settlement or who have submitted claims (7 days after the deadline for submission of Elections Not to Participate in Settlement and Claims Forms)
1/19/10	Last day for Settlement Administrator to

Date	Event
	serve on the parties and file with the Court statement of due diligence in complying with its obligations under the settlement.
1/22/10	Due date for joint motion for final approval of settlement and plaintiff's separate motion for class representative fee and class counsel's attorneys' fees and expenses (28 days before final approval hearing)
2/22/10	Final approval hearing

IV. CONCLUSION

For the reasons set forth above, Plaintiffs motion to:

- (1) Preliminarily certify the Settlement Class is GRANTED;
- (2) Conditionally certify a FLSA collective action is GRANTED;
- (3) Preliminarily certify the Settlement is GRANTED;
- (4) Approve the Proposed Notice, the Claim Form, the Form of Election Not to Participate, and the Notice Plan is GRANTED;
- (5) Appoint Rust Consulting, Inc. the Settlement Administrator is GRANTED;
- (6) Approve the schedule set forth above is GRANTED.

SO ORDERED

Dated: November 16, 2009

/s/ Oliver W. Wanger
Oliver W. Wanger
United States District Judge