

1 UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF CALIFORNIA
3

4 LEE BOND and RICHARD JAMES
5 BURKHART, individually and on
6 behalf of all others similarly
7 situated,

8 Plaintiffs,

9 v.

10 FERGUSON ENTERPRISES, INC., a
11 corporation, and DOES 1-50,
12 inclusive,

13 Defendants.

1:09-cv-01662 OWW MJS

MEMORANDUM DECISION RE MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT (DOC.
29)

14 I. INTRODUCTION

15 Plaintiffs Lee Bond and Richard Burkhart bring this action
16 on behalf of themselves and approximately 548 current and former
17 truck drivers employed by Defendant in California from July 17,
18 2005 for alleged violations of state wage-and-hour laws. See
19 Putative Class Action Complaint ("Complaint"), Doc. 2-2, Ex. A.

20 The parties have entered into a Joint Stipulation of Class
21 Action Settlement Agreement ("Settlement"). Doc. 30, Ex. 1.
22 Under the terms of the Settlement, the parties seek: (1)
23 preliminary approval of the Settlement; (2) provisional
24 certification of the Settlement Class; (3) appointment of
25 Plaintiffs as Class Representatives; (4) appointment of Ackermann
26 & Tillage, P.C. and Wasserman, Comden, Casselman & Esenstein,
27 L.L.P. as Class Counsel; (5) approval of the parties' proposed
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1 form and method of notifying Class Members of the Settlement; (6)
2 an order scheduling the hearing date for final approval of the
3 class settlement; and (7) entry of a preliminary approval order.
4 Plaintiffs filed a Motion for Preliminary Approval of Class
5 Action Settlement on December 15, 2010. Doc. 29. Defendants filed
6 a Statement of Non-Opposition to the Settlement on January 10,
7 2011. Doc. 33.

9 II. BACKGROUND

10 Plaintiffs allege that Defendant failed to provide timely
11 off-duty meal periods; failed to pay for missed, on-duty and
12 untimely meal periods; failed to provide accurate itemized wage
13 statements; and failed to pay all wages due upon termination or
14 separation of employment. Plaintiffs sought to certify a class
15 composed of themselves and similarly situated individuals, and
16 sought declaratory relief and recovery of back wages, interest,
17 penalties, attorneys' fees, and costs. See Complaint.

18 From November 2009 through the day of the settlement
19 negotiation, the parties conducted extensive formal and informal
20 discovery concerning Defendant's policy and practices.
21 Plaintiffs' counsel undertook an extensive review of the
22 information amassed during discovery, including: (1) analysis of
23 thousands of documents produced by Defendant, including time
24 records and payroll data for 34 class members and Defendant's
25 employment records; (2) analysis of Defendant's legal arguments;
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1 (3) obtaining more than thirty sworn declarations from former and
2 current truck drivers of Defendant; (4) taking the Rule 30(b)(6)
3 deposition of Defendant's corporate representative; (5) analysis
4 of class-wide violation rates on the automatic deduction and meal
5 break claims on the basis of a sample of thirty-four class
6 members; (6) analysis of class-wide violations and damages on
7 derivative claims; and (7) research of the applicable law with
8 respect to Plaintiffs' claims. Harnett Decl., Doc. 31 ¶ 4.

10
11 III. SUMMARY OF THE SETTLEMENT.

12 The case was resolved with the aid of a mediator, Gig
13 Kyraicou. The Settlement covers approximately 548 current and
14 former truck drivers employed by Defendant in California from
15 July 17, 2005 to the date the court enters an Order of
16 Preliminary Approval ("Class Period"), excluding new truck
17 drivers hired after November 3, 2010 and 46 truck drivers who
18 previously signed severance release agreements prior to the
19 filing of the lawsuit ("Class Members").

20
21 A. Gross Settlement Amount.

22 Under the Settlement, Defendant will pay up to \$2.25 million
23 ("Gross Settlement Amount"). This total sum will cover:

- 24 • settlement awards to be paid to Class Members who timely
25 submit valid claims ("Settlement Awards");
26
27 • any payroll withholding on the Settlement Awards;

- 1 • the Settlement Administrator's reasonable fees and expenses
- 2 (no more than \$18,000);
- 3 • (subject to court approval) payments to Plaintiffs, in
- 4 addition to their Settlement Awards, of \$11,250 each in
- 5 compensation of their services as Class Representatives;
- 6 • and (also subject to court approval) payments to Class
- 7 Counsel of no more than 30% of the Gross Settlement Amount,
- 8 or \$675,000, for their reasonable attorneys' fees, as well
- 9 as litigation costs, up to \$10,000.

10 See Settlement, Doc. 30, Ex. 1, § 6. There will be no reversion
11 of the Gross Settlement Amount to Defendant.
12

13
14 B. Payment of Settlement Awards.

15 After the other amounts are deducted, the balance of the
16 Gross Settlement Amount, approximately \$1,524,500 (the "Net
17 Settlement Amount") will be distributed to all Class Members who
18 timely submit valid claims ("Claimants"), based upon the
19 following allocation formula:
20

21 The dollar amount payable to each member of the Class will
22 be calculated by taking the "Potential Gross Individual
23 Settlement Proceeds", i.e., the "Net Settlement Amount"
24 (estimated to be slightly more than \$1,500,000) divided by
25 the total number of weeks worked by all members of the
Class during the Class Period, and then multiplied by the
total number of weeks worked by each individual member of
the Settlement Class.

26 Settlement, Doc. 30, Ex. 1, § 7(a). A Claim Form, which will be
27 mailed to Class Members with the Notice of Proposed Class Action
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1 Settlement and Fairness Hearing ("Notice"), will include for each
2 Class Member the number of weeks actively worked during the Class
3 Period and the Class Member's estimated Settlement Amount.

4 Ackermann Decl., Doc. 31, ¶ 52.

5 For tax purposes, one-third (1/3) of each Settlement Award
6 will be deemed wages and two-thirds (2/3) will be treated as
7 penalties and interest. Settlement Awards will be subject to the
8 applicable tax withholding and reporting. Settlement, § 7(c).

9 The formula relies upon objective evidence of the number of
10 weeks worked during the Class Period. Class Members can review
11 and confirm this information, and the Claim Form permits Class
12 Members to challenge the number of weeks worked. Settlement, §
13 7(e).
14
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16 C. Distribution of Unclaimed Funds and Uncashed Checks.

17 If less than 60% of the Gross Settlement Amount is claimed
18 and distributed to all Claimants, then each Claimant's Settlement
19 Award will be proportionately increased, up to a maximum of 1.5
20 times their original Settlement Award, until the total individual
21 Settlement Awards equals 60% of the Net Settlement Amount. If the
22 combined total of all Claimants' Settlement Awards at 1.5 times
23 the original amount is still less than 60% of the Gross
24 Settlement Amount, the balance of the funds will be paid to a
25 501(c)(3) nonprofit organization, to be agreed upon by the
26 parties and approved by the court. Settlement, § 6(a).
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1 D. Scope of the Release.

2 The Settlement provides that all Class Members other than
3 those who elect not to participate in the Settlement shall have
4 released the "Released Parties" from the "Released Claims." The
5 Notice contains the following release:

6 For purposes of this Notice and the Settlement Agreement,
7 the "Released Claims" of the Settlement Class are defined
8 as: All claims, demands, rights, liabilities, and causes
9 of action, whether brought directly, representatively, or
10 in any capacity, that were or could have been asserted in
11 the Lawsuit based upon the facts alleged therein, whether
12 in tort, contract, statute, rule, ordinance, order,
13 regulation, or otherwise, including state, federal, and
14 local laws, whether for economic damages, non-economic
15 damages, restitution, penalties, punitive damages, wages,
16 premium payments, liquidated damages, attorneys' fees, or
17 any other type of recovery thereon, arising out of any
18 act, omission, transaction, or event that occurred or is
19 alleged to have occurred up to the date of this Agreement.
20 Claims specifically included in this release without
21 limitation are those for alleged failure to provide meal
22 or rest breaks, alleged failure to pay for all hours
23 worked based on the application of an "automatic lunch
24 deduction" (including claims for unpaid overtime, whether
25 known or unknown, arising during the Class Period for the
26 Class Members based on the claims reasonably related to
27 those alleged in the Lawsuit), alleged failure to provide
28 accurate itemized wage statements, alleged failure to
provide timely pay upon termination, alleged unfair
competition by means of the foregoing, and any other
claims arising out of alleged failure to pay wages or
penalties or for any other claims asserted in the Lawsuit.
This release shall be in addition to, and not in lieu of,
any release previously executed by any member of the
Settlement Class.

24 With respect to the Released Claims, Plaintiffs and the
25 members of the Settlement Class stipulate and agree that,
26 upon the effective date of the settlement, all of them
27 shall be deemed to have, and by operation of the Final
28 Judgment shall have, expressly waived and relinquished, to
the fullest extent permitted by law, the provisions,
rights and benefits of Section 1542 of the California

1 Civil Code, or any other similar provision under federal
2 or state law that purports to limit the scope of a general
3 release. Section 1542 provides:

4 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
5 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR
6 HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH
7 IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED
8 HIS OR HER SETTLEMENT WITH THE DEBTOR.

9 Settlement Class Members shall fully and finally release
10 and discharge Ferguson, and each of their past, present,
11 or future officers, directors, owners, shareholders,
12 employees, agents, principals, heirs, representatives,
13 accountants, auditors, attorneys, consultants, insurers,
14 and reinsurers, and their respective successors and
15 predecessors in interest, subsidiaries, affiliates,
16 parents, and each of their company-sponsored employee
17 benefit plans, and all of their respective officers,
18 directors, employees, administrators, fiduciaries,
19 trustees, and agents ("Released Parties"), from the
20 Released Claims.

21 Notice, Doc. 30, Ex. 1-A, § 5.

22 E. Objections and Opt-Out Process

23 Any Class Member who so wishes may object or elect not to
24 participate in the Settlement. The Notice fully explains the
25 objection and opt-out procedures. Notice, § 3.

26 F. Class Representative Payments; Class Counsel Attorneys' Fees
27 Payment and Class Counsel Litigation Expenses Payment.

28 By a motion to be filed prior to the Final Approval Hearing,
Plaintiffs and their counsel will seek:

- payments to Plaintiffs, in addition to their Settlement Awards, of \$11,250 each in compensation of their services as Class Representatives; and
- payments to Class Counsel of no more than 30% of the Gross

1 Settlement Amount, or \$675,000, for their reasonable
2 attorneys' fees, as well as litigation costs, up to
3 \$10,000.

4 Settlement, § 6(b), (d). The exact amounts requested, and their
5 justification, will be detailed in a motion, brief, and
6 declaration to be provided in conjunction with the final approval
7 of the settlement and are subject to the court's final review and
8 approval.
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10 IV. DISCUSSION

11 A. Request for Conditional Certification of a Class for 12 Settlement.

13 Plaintiffs request certification of the Class under Rule
14 23(c) (1) which permits a court to "make a conditional
15 determination of whether an action should be maintained as a
16 class action, subject to final approval at a later date." *Fry v.*
17 *Hayt, Hayt & Landau*, 198 F.R.D. 461, 466 (E.D. Pa. 2000).
18 Conditional certification requires satisfaction of the pre-
19 requisites of Rule 23(a) and (b). *Id.*
20

21 1. Rule 23(a) Requirements.

22 Federal Rule of Civil Procedure 23(a) states in pertinent
23 part that "[o]ne or more members of a class may sue or be sued as
24 representative parties on behalf of all." As a threshold matter,
25 in order to certify a class, a court must be satisfied that
26

27 (1) the class is so numerous that joinder of all members
28 is impracticable (the "numerosity" requirement); (2)

1 there are questions of law or fact common to the class
2 (the "commonality" requirement); (3) the claims or
3 defenses of representative parties are typical of the
4 claims or defenses of the class (the "typicality"
5 requirement); and (4) the representative parties will
6 fairly and adequately protect the interests of the class
7 (the "adequacy of representation" requirement).

8 *In re Intel Secs. Litig.*, 89 F.R.D. 104, 112 (N.D. Cal.
9 1981) (citing Fed. R. Civ. P. 23(a)).

10 a. Numerosity.

11 A proposed class must be "so numerous that joinder of all
12 members is impracticable." Fed. R. Civ. P. 23(a)(1). The
13 numerosity requirement demands "examination of the specific facts
14 of each case and imposes no absolute limitations." *Gen. Tel. Co.*
15 *of the Nw., Inc. v. EEOC*, 446 U.S. 318, 330 (1980).

16 Here, the proposed class is comprised of all individuals who
17 have been employed by Defendant in California as truck drivers
18 from July 17, 2005 to the date the court enters an Order of
19 Preliminary Approval, excluding new truck drivers hired after
20 November 3, 2010 and 46 drivers who previously signed severance
21 release agreements prior to the filing of this lawsuit. There are
22 approximately 548 Class Members. Courts have routinely found the
23 numerosity requirement satisfied when the class comprises 40 or
24 more members. *Ansari v. New York Univ.*, 179 F.R.D. 112, 114
25 (S.D.N.Y. 1998). Numerosity is also satisfied where joining all
26 class members would serve only to impose financial burdens and
27 clog the court's docket. *In re Intel Secs. Litig.*, 89 F.R.D. at
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1 112. Here, the joinder of approximately 548 individual current
2 and former employees would only further clog this court's already
3 overburdened docket.

4
5 b. Common Questions of Fact and Law.

6 Rule 23(a) also demands "questions of law or fact common to
7 the class." Fed. R. Civ. P. 23(a)(2). It does not require that
8 all questions of law or fact be common to every single member of
9 the class. To satisfy the commonality requirement, plaintiffs
10 need only point to a single issue common to the class. *Dukes v.*
11 *Wal-Mart, Inc.*, 509 F.3d 1168, 1177 (9th Cir. 2007); *Slaven v. BP*
12 *Am., Inc.*, 190 F.R.D. 649, 655 (C.D. Cal. 2000). Commonality
13 exists when there is either a common legal issue stemming from
14 divergent factual predicates or a common nucleus of facts
15 resulting in divergent legal theories. *Hanlon v. Chrysler Corp.*,
16 150 F.3d 1011, 1019 (9th Cir. 1998).
17

18 Here, potential Class Members share the following legal and
19 factual questions:

- 20
- 21 • Whether Defendant automatically deducted thirty minutes
22 worth of working time on the basis of the unverified
23 assumption that truck drivers always took a half-hour, off-
24 duty meal break and *in lieu* of keeping contemporaneous or
25 accurate meal break records;
 - 26 • Whether Defendant failed to compensate truck drivers for
27 missed or untimely meal breaks with an extra hour of premium
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1 pay;

- 2 • Whether Defendant failed to implement a systematic daily
3 method of relieving Class Members of their duties for meal
4 breaks;
5
6 • Whether Defendant failed to pay former employees all wages
7 due at termination; and
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9 • Whether the above practices violate the Labor Code and Wage
10 Orders.

11 These common questions of law or fact shared by all prospective
12 class members are sufficient to satisfy the commonality
13 requirement.

14 c. Typicality.

15 Rule 23(a) (3) demands "the claims or defenses of the
16 representative parties are typical of the claims or defenses of
17 the class." *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir.
18 2001). Typicality is satisfied if the representatives' claims
19 arise from the same course of conduct as the class claims and are
20 based on the same legal theory. *See, e.g., Kayes v. Pac. Lumber*
21 *Co.*, 51 F.3d 1449, 1463 (9th Cir. 1995) (claims are typical where
22 named plaintiffs have the same claims as other members of the
23 class and are not subject to unique defenses).

24 Because every class member was paid under the same pay
25 practices as every other class member, the Class Representatives'
26 claims are typical of those of the other Class Members. The
27
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1 typicality requirement is satisfied.

2
3 d. Fair & Adequate 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
8 addressed: (a) do the named plaintiffs and their counsel have any
9 conflicts of interest with other class members and (b) will the
10 named plaintiffs and their counsel prosecute the action
11 vigorously on behalf of the class?" *In re Mego Fin. Corp. Sec.*
12 *Litig.*, 213 F.3d 454, 462 (9th Cir. 2000).

13
14 All requirements are satisfied here. Proposed class counsel,
15 Craig J. Ackerman, Esq., of Ackerman & Tilajef, P.C., and Melissa
16 M. Harnett, Esq., of Wasserman, Comden, Casselman & Esensten,
17 L.L.P., have significant experience litigating class actions,
18 serving as class counsel, representing plaintiffs, and wage and
19 hour litigation. See Harnett Decl., Doc. 31, ¶¶ 13-32, Ackermann
20 Decl., Doc. 30, ¶¶ 70-71. Proposed Class Counsel have no
21 conflicts with the class (Harnett Decl., Doc. 31, ¶¶ 5, 7), and
22 have devoted a significant amount of time to the lawsuit
23 (Ackermann Decl., Doc. 30, ¶ 72; Harnett Decl., Doc. 31, ¶ 11).

24 In addition, the Class Representatives' interests are
25 completely aligned with those of the class. The Class
26 Representatives' interest is in maximizing their recovery.
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1 Although they will each receive an additional \$11,250, this
2 amount is reasonable compensation for the time and expense they
3 devoted to pursuing this case. See Harnett Decl., Doc. 31, ¶ 9.
4

5 2. Certification of a Class under Rule 23(b)(3).

6 Once the threshold requirements of Rule 23(a) are satisfied,
7 a class may be certified only if the class action satisfies the
8 superiority requirements of Rule 23(b)(1), (b)(2), and/or (b)(3).
9 Here, the parties agree for purposes of the Settlement only that
10 certification of the Class is appropriate under Rule 23(b)(3)
11 because "questions of law or fact common to the members of the
12 class predominate over any questions affecting only individual
13 members, and ... a class action is superior to other available
14 methods for the fair adjudication of the controversy." Fed. R.
15 Civ. P. 23(b)(3).
16

17
18 B. Preliminary Approval of the Settlement.

19 In reviewing the settlement, although it is not a court's
20 province to "reach any ultimate conclusions on the contested
21 issues of fact and law which underlie the merits of the dispute,"
22 a court should weigh the strength of plaintiff's case; the risk,
23 expense, complexity, and likely duration of further litigation;
24 the stage of the proceedings, and the value of the settlement
25 offer. *Chem. Bank v. City of Seattle*, 955 F.2d 1268, 1291 (9th
26 Cir. 1992). The court should also watch for collusion between
27 class counsel and defendants. *Id.* Preliminary approval of a
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1 settlement and notice to the proposed class is appropriate: "[i]f
2 [1] the proposed settlement appears to be the product of serious,
3 informed, noncollusive negotiations, [2] has no obvious
4 deficiencies, [3] does not improperly grant preferential
5 treatment to class representatives or segments of the class, and
6 [4] falls with the range of possible approval...." *In re*
7 *Tableware Antitrust Litig.*, 484 F.Supp.2d 1078, 1079 (N.D. Cal.
8 2007) (adding numbers). The Settlement proposed by the parties
9 meets this test.
10

11
12 1. The Settlement Was the Product of Informed, Arm's
13 Length Negotiations.

14 The Settlement was reached after informed, arm's length
15 negotiations between the parties. Both parties conducted
16 extensive investigation and discovery allowing them to assess the
17 strengths and weaknesses of the case. Plaintiffs' counsel had
18 access to thousands of documents, including trip manifests,
19 payroll data, and Defendant's employment policies, and obtained
20 more than thirty sworn declarations from former and current
21 employees of Defendant. Harnett Decl., Doc. 31 ¶ 4. The parties
22 participated in mediation with an impartial mediator. The
23 Settlement is the product of non-collusive negotiations.
24

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

26 The Settlement provides for a payment of \$2.25 million by
27 Defendants, which is substantial given the size of the class (548
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1 Class Members) and limited nature of the alleged violations at
2 issue. All Settlement Amounts to be paid under the Settlement are
3 determined by the number of weeks each Class Member worked during
4 the Class Period. The provision for a 60% floor on distribution
5 of the Gross Settlement Amount, adjustment of each Claimant's
6 Settlement Award, and donation of excess proceeds to charity is
7 appropriate, fair, and ensures that all of the Net Settlement
8 Amount is directed to Class Members to the extent
9 administratively possible.

11 The Class Representative payments and the Class Counsel
12 attorneys' fees payment are appropriate, and are subject to court
13 approval at the final approval hearing. The expected Settlement
14 Administrator's fees and costs of approximately \$18,000 is
15 reasonable.

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

19 To determine whether a settlement "falls within the range of
20 possible approval" a court must focus on "substantive fairness
21 and adequacy," and "consider plaintiffs' expected recovery
22 balanced against the value of the settlement offer." *In re*
23 *Tableware Antitrust Litig.*, 484 F. Supp. 2d at 1080.

24 If the litigation proceeds, Plaintiffs would face
25 significant risks. For example, the primary cause of action in
26 this case revolves around the provision of meal periods.
27 However, the meaning of an employer's obligation to provide meal
28

1 periods under California law is currently before the California
2 Supreme Court. *See Brinker Rest. Corp. v. Superior Court*
3 *(Hohnbaum)*, 165 Cal.App.4th 25 (2008) (review granted)). A
4 defense ruling in *Brinker* could impair Plaintiffs' ability to
5 proceed on these causes of action.

6
7 Even if Plaintiffs were to prevail, they would be required
8 to expend considerable additional time and resources potentially
9 outweighing any additional recovery obtained through successful
10 litigation. In addition, continued litigation would delay payment
11 to the Class Members and increase the amount of attorneys' fees.

12 In light of these risks, the significant recovery is fair,
13 reasonable, and adequate and is in the best interest of the Class
14 Members in light of all known facts and circumstances.

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16 4. The Release Is Too Broad.

17 As part of the Settlement, Class Members will be deemed to
18 have released "[a]ll claims, demands, rights, liabilities, and
19 causes of action, whether brought directly, representatively, or
20 in any capacity, that were or could have been asserted in the
21 Lawsuit based upon the facts alleged therein, whether in tort,
22 contract, statute, rule, ordinance, order, regulation, or
23 otherwise, including state, federal, and local laws, whether for
24 economic damages, non-economic damages, restitution, penalties,
25 punitive damages, wages, premium payments, liquidated damages,
26 attorneys' fees, or any other type of recovery thereon, *arising*

1 out of any act, omission, transaction, or event that occurred or
2 is alleged to have occurred up to the date of this Agreement."
3 Notice, § 5 (emphasis added). The release does not appropriately
4 track the extent and breadth of Plaintiffs' allegations in this
5 case and releases unrelated claims of any kind or nature that
6 class members may have against defendants. This form of release
7 is overbroad by arguably releasing all unrelated claims up to the
8 date of the Agreement (the full language of the release is on
9 Page 6 of this Memorandum Decision).

11
12 5. Collusion.

13 There is no evidence of collusion here.

14
15 The settlement is preliminarily approved as fair and
16 reasonable, subject to a narrowing of the release.

17
18 C. Proposed Class Notice & Administration.

19 "Adequate notice is critical to court approval of a class
20 settlement under Rule 23(e)." *Hanlon*, 150 F.3d at 1025. A class
21 action settlement notice "is satisfactory if it generally
22 describes the terms of the settlement in sufficient detail to
23 alert those with adverse viewpoints to investigate and to come
24 forward and be heard." *Churchill Vill., LLC v. Gen. Elec.*, 361
25 F.3d 566, 575 (9th Cir. 2004) (internal quotations and citations
26 omitted).

27
28 Here, the proposed Notice (Doc. 30, Ex. 1-A) and the manner

1 of notice agreed upon by the parties (Settlement, § 5) is "the
2 best notice practicable," as required under Rule 23(c)(2)(B).
3 All Class Members can be identified and the Notice and related
4 materials (Claim Form and Request for Exclusion Form) will be
5 mailed directly to each Class Member. The Class Notice adequately
6 informs Class Members of the nature of the litigation, the
7 essential terms of the Settlement, and how to make a claim under
8 the Settlement, object to or comment on the Settlement, or elect
9 not to participate in the Settlement. Further, the Class Notice
10 identifies Class Counsel, specifies the amounts of the Class
11 Representative payments, Class Counsel Attorneys' fees, and Class
12 Counsel litigation expenses that Plaintiffs and Class Counsel
13 will seek, and explains how to obtain additional information
14 regarding the action and the Settlement.
15

16
17 Within 5 days after the court grants preliminary approval of
18 the Settlement, Defendant will provide the Settlement
19 Administrator with an updated list containing names, social
20 security numbers, dates of employment, weeks worked during the
21 Class Period and last-known addresses for each member of the
22 Settlement Class. Settlement, § 9(b). The Settlement
23 Administrator will mail the Notice, Claim Form, and Request for
24 Exclusion to Class Members within 21 days following the
25 preliminary approval. The Claim Form includes each individual
26 Class Member's weeks worked and estimated Settlement Award based
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1 on a 100% claim rate. Class Members may challenge and seek
2 correction of the number of weeks worked during the Class Period.
3 Class Members must submit and postmark their Claim Form no later
4 than 45 days after the Notice is mailed. *Id.* at § 5(c). The
5 Settlement Administrator will resend improperly completed Claim
6 Forms; and Class Members who receive a re-mailed Claim Form will
7 have 30 days to correct, complete, and/or sign the Claim Form.
8 *Id.* at § 9(c)(v).

10 The Settlement Administrator will provide weekly reports to
11 Plaintiffs' and Defendant's counsel. *Id.* at § 9(c)(vii). Not
12 later than 30 days prior to the final approval hearing, the
13 Settlement Administrator will submit a declaration describing
14 efforts made to locate all Class Members. *Id.* at § 9(c)(viii).
15 The Settlement Administrator will supplement the declaration as
16 necessary, and submit a final declaration no later than 3
17 business days prior to the final approval hearing. *Id.*

19 The procedures set forth in the Settlement provide the best
20 possible notice to the Class Members.

22 D. Simpluris Inc. is an Appropriate Settlement Administrator.

23 The parties have agreed upon and recommend that the court
24 appoint Simpluris, Inc., to serve as the Settlement
25 Administrator. Simpluris's proposed fee is up to \$18,000.
26 Ackermann Decl. ¶ 50.

1 E. Settlement Approval Schedule.

2 The parties are to submit the following schedule for
3 approval of the Settlement:

Date	Event
	Preliminary approval
	Defendant to provide to Settlement Administrator with an electronic database containing Class Member contact information and data necessary to calculate settlement shares (5 days after preliminary approval)
	Settlement Administrator to mail Notice Packets to all Class Members (21 days after preliminary approval)
	Date for Settlement Administrator to contact Class Members who have not submitted Claim Forms to remind them of the upcoming deadline
	Last day for Class Members to comment on or object to Settlement and mail in Claim Form or Request for Exclusion (45 days after mailing of Notice packets), other than Class Members who receive a re-mailing of the Notice packets, who have 30 days
	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
	Last day for Settlement Administrator to serve on the parties and file with the court preliminary statement of due diligence in complying with its obligations under the settlement (30 days before final approval hearing)
	Last day for Settlement Administrator to serve on the parties and file with the court final statement of due diligence in complying with its obligations under the settlement (3 business days before final approval hearing)
	Due date for motion for final approval of settlement and plaintiff's separate motion for class representative fee and class counsel's attorneys' fees and expenses
	Final approval hearing

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V. CONCLUSION

For all the reasons set forth above:

(1) The Settlement Class is conditionally certified;

(2) The Class Settlement is preliminarily approved;

(3) Craig J. Ackerman, Esq., of Ackerman & Tilajef, P.C.,
and Melissa M. Harnett, Esq., of Wasserman, Comden, Casselman &
Esensten, L.L.P., are appointed Class Counsel;

(4) The named plaintiffs are appointed Class
Representatives;

(5) Simpluris, Inc. is appointed Settlement Administrator;

(6) The class Notice and related materials are approved for
distribution, subject to the narrowing of the release; and

(7) Plaintiffs shall submit a revised release and Settlement
Approval Schedule within five (5) days of this decision.

Plaintiffs shall submit a form of order consistent with this
decision within five (5) days following electronic service.

SO ORDERED

Dated: January 24, 2011

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