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5 **UNITED STATES DISTRICT COURT**
6 **EASTERN DISTRICT OF CALIFORNIA**
7

8 PATRICIA FRANCO, et al.,

CASE NO. 1:10-cv-02354-SKO

9 Plaintiffs,

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

10 v.

(Docket No. 38)

11 RUIZ FOOD PRODUCTS, INC.,

12 Defendant.
13
14 _____ /
15

16 **I. INTRODUCTION**

17 On July 5, 2012, Plaintiffs Patricia Franco ("Franco") and Lilia Castro ("Castro," collectively
18 "Plaintiffs") filed a motion requesting final approval of a class action settlement, including an award
19 of attorneys' fees and costs and enhancement awards for the named Plaintiffs as Class
20 Representatives. (Doc. 38.) No opposition to the motion was filed, and no objection was submitted
21 by any member of the class ("Class Member"). The matter was initially heard by the Court on
22 August 1, 2012. Mr. Philip Downey, Esq., of The Downey Law Firm, LLC, and Ms. Rose Luzon,
23 Esq., of Shepherd Finkelman Miller & Shah, LLP, appeared on behalf of Plaintiffs, and Mr. Mitchell
24 Boomer, Esq., and Ms. Cynthia Sandoval, Esq., of Jackson Lewis LLP appeared on behalf of
25 Defendant Ruiz Food Products, Inc. ("Defendant"). No Class Member appeared at the hearing. The
26 Court ordered Plaintiffs to provide supplemental information, which was filed on October 15, 2012.
27 (Docs. 41, 51.) A second hearing concerning Plaintiffs' motion was held on November 14, 2012,
28 during which Ms. Luzon and Mr. Boomer appeared; no Class Member was present.

1 For the reasons set forth below, the Court GRANTS FINAL APPROVAL of the parties' class
2 action settlement, (2) GRANTS an award of attorneys' fees and costs, and (3) GRANTS
3 enhancement awards to Plaintiffs as Class Representatives.¹

4 II. BACKGROUND

5 On December 15, 2010, Plaintiffs filed a putative collective class action complaint against
6 Defendant pursuant to the federal Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 216(b), and Rule
7 23 of the Federal Rules of Civil Procedure for violations of California Labor Code and Wage Orders
8 and California Business and Professions Code § 17200, *et seq.* Plaintiffs' operative pleading, the
9 First Amended Complaint, was filed on May 4, 2011, and alleges claims for (1) violation of the
10 FLSA; (2) violation of the California Labor Code – failure to compensate for all hours worked;
11 (3) violation of the California Labor Code – failure to pay overtime; (4) violation of the California
12 Labor Code – failure to provide meal and rest periods; (5) unpaid wages and waiting time penalties;
13 (6) failure to properly itemize pay stubs; and (7) violation of California Business & Professions Code
14 § 17200, *et seq.*

15 On September 28, 2011, the parties mediated their dispute with Michael J. Loeb, Esq., and
16 after an all-day mediation, the parties reached a class-wide settlement. (Doc. 29, Young Decl. in
17 Support of Preliminary Approval, ¶ 7.) The parties memorialized the terms of their proposed
18 settlement in a "Joint Stipulation of Settlement and Release Between Plaintiffs and Defendant"
19 ("Settlement Agreement") (Doc. 29-1), and on December 22, 2011, filed a request for preliminary
20 approval of the class settlement. (Docs. 27-30.) On February 10, 2012, the Court granted
21 preliminary approval of the settlement, authorized the notice process, and scheduled a hearing to
22 consider final approval of the settlement. (Doc. 35.)

23 On July 5, 2012, Plaintiffs filed a Motion for Final Approval of Class Action Settlement,
24 including a request for attorneys' fees and costs and a request for an enhancement award for the
25 named Plaintiffs. (Doc. 38.) No opposition was filed. A hearing was held on August 1, 2012, and
26 the Court issued an order requiring Plaintiffs to submit supplemental information in support of the
27

28 ¹ The parties have consented to the jurisdiction of the United States Magistrate Judge assigned to the case.
(Docs. 47, 48.)

1 motion. (Doc. 41.) Additionally, the Court was notified by Defendant that, on August 7, 2012,
2 Defendant served notice of the proposed settlement on the appropriate Offices of the Attorney
3 General pursuant to 28 U.S.C. § 1715. (See Docs. 42-44.) On October 15, 2012, Plaintiffs filed a
4 Supplemental Submission Regarding Plaintiffs' Motion for Final Approval of Class Action
5 Settlement pursuant to the Court's August 1, 2012, Order. (Doc. 51.) A second hearing was held
6 on November 14, 2012, and Plaintiffs' motion was submitted for decision. (Doc. 52.)

7 **III. THE PARTIES' SETTLEMENT**

8 On October 19, 2011, Plaintiffs filed a Notice of Settlement and on December 22, 2011, filed
9 a request for preliminary approval of the class-action settlement, indicating that the parties had
10 negotiated a resolution of their dispute. (Docs. 25, 27-30.) The terms of the parties' Settlement
11 Agreement is summarized below.

12 **A. The Composition of the Settlement Class**

13 The Settlement Agreement provides for the certification, for settlement purposes only, of a
14 class comprised of all persons currently or formerly employed as non-exempt production line
15 employees at the Ruiz Food processing facility in Dinuba, California, between December 15, 2006,
16 and the date of the preliminary approval of the Settlement Agreement (approved by the Court on
17 February 10, 2012 (Doc. 35)) (the "Settlement Class"). (Doc.29-1, Settlement Agreement, ¶¶ 6-7.)

18 **B. The Material Terms of the Settlement Agreement**

19 **1. The Class Settlement Amount**

20 Plaintiffs and Defendant have agreed to settle the underlying class claims in exchange for a
21 Class Settlement (the "Settlement") in the maximum amount of \$2,500,000 (the "Settlement
22 Amount"). All amounts paid to the Class Members, all attorneys' fees, costs, enhancement awards
23 for the Class Representatives, fees and expenses for the Settlement Administrator, and any other
24 payments provided by the Settlement Agreement shall be paid out of the Settlement Amount. The
25 net settlement amount shall be calculated by deducting from the Settlement Amount all attorneys'
26 fees and costs, the enhancement awards for the Class Representatives, a payment to the State of
27 California pursuant to the California Private General Attorney Act ("PAGA"), codified at California
28 Labor Code § 2699, *et seq.*, in the amount of \$10,000, and the actual fees and expenses of the

1 Settlement Administrator (the "Net Settlement Amount"). The entire Net Settlement Amount shall
2 be paid to the Class Members as Settlement Awards ("Settlement Awards"). To the extent any funds
3 remain after satisfying all payments to Class Members, such funds will be paid to the *cy pres*
4 beneficiaries: Ruiz 4 Kids (50%) and Chicana Latina Foundation (50%). No portion of the Net
5 Settlement Amount will revert to Defendant or be refunded. Defendant shall be responsible to pay
6 separately the employer payroll taxes related to the Settlement Agreement. (Doc. 29-1, Settlement
7 Agreement, ¶ 14(c).)

8 **2. Settlement Awards**

9 Settlement Awards will be distributed as follows: (1) Class Members whose Notice of
10 Settlement ("Notice") is returned as undeliverable with no forwarding address will be excluded from
11 the Settlement Class, will not be bound by the Settlement, will be deemed to have "opted out" from
12 Class membership, and will not receive any Settlement Awards; (2) Settlement Awards will be
13 calculated according to the number of weeks worked by a Class Member, each to receive a share of
14 the Net Settlement Amount in proportion to the number of weeks he or she worked during the class
15 period compared to the number of weeks worked by other Class Members. (Doc. 29-1, Settlement
16 Agreement, ¶ 14(d).)

17 **3. The Labor Workforce and Development Agency Payment**

18 In satisfaction of the claims arising under the PAGA, the parties have agreed that Defendant
19 will pay \$10,000 – 75% (\$7,500) of which will be paid to the California Labor and Workforce
20 Development Agency and the balance (\$2,500) will become part of the Net Settlement Amount.
21 (Doc. 29-1, Settlement Agreement, ¶ 14(e).)

22 **4. Claims Administration Costs**

23 The parties have agreed that the Heffler, Radetich & Saitta LLP, the Settlement
24 Administrator, will be paid costs not to exceed \$30,000 associated with the administration of this
25 Settlement. (Doc. 29-1, Settlement Agreement, ¶ 14(j), ¶ 15; *see also* Doc. 38-1, 7:24-26; Doc. 38-3
26 (Hamer Decl.), ¶ 14.)

1 **5. Class Counsel Award of Attorneys' Fees and Costs**²

2 The parties have agreed that Class Counsel shall be awarded \$825,000 in attorneys' fees and
3 \$30,000 in costs. (Doc. 29-1, Settlement Agreement, ¶ 16.)

4 **6. Class Representative Enhancement Awards**

5 The parties have agreed that Class Representatives Franco and Castro will each be paid
6 \$7,000 as Class Representative Enhancement Awards. (Doc. 29-1, Settlement Agreement, ¶ 14(I),
7 ¶ 15, *see also* Doc. 38-1, 7:19-21.)

8 **C. The Scope of the Release in the Settlement Agreement**

9 The parties' Settlement Agreement sets forth the following release by the Class Members:

10 19. Upon final approval by the Court of this Stipulation of Settlement, and except
11 as to such rights or claims as may be created by this Stipulation of Settlement, each
12 Class Member fully releases and discharges Defendant, its present and former parent
13 companies, subsidiaries, related or affiliated companies, shareholders, owners,
14 officers, directors, employees, agents, attorneys, insurers, successors and assigns, and
15 any individual or entity which could be jointly liable with Defendant ("Released
16 Parties"), from any and all claims, debts, liabilities, demand, obligations, guarantees,
17 costs, expenses, attorneys' fees, damages, action or causes of action, known or
18 unknown, of any nature under state, federal or local law arising out of Plaintiffs'
19 causes of action for alleged: (1) Violation of the Fair Labor Standards Act, 29 USC
20 § 201, *et seq.*; (2) Violation of the California Labor Code Failure to Compensate For
21 All Hours Worked, California Labor Code §§ 201-204, *et seq.*; (3) Violation of the
22 California Labor Code Failure to Pay Over Time Wages; (4) Violation of the
23 California Labor Code Failure to Provide Meal and Rest Breaks (Cal. Lab. Code §
24 226.7 *et seq.*, Cal Lab. Code § 512 and California Industrial Welfare Commission
25 Wage Order(s); (5) Unpaid Wages and Waiting Time Penalties; (6) Failure to
26 Properly Itemize Pay Stubs (Cal. Lab. Code §§ 226(a) and 226(e); and, (7) Violation
of California's Business and Professions Code §§ 17200, *et seq.*, and any other claims
whatsoever alleged in this Action, including, without limitation, all claims for unpaid
wages and overtime, unpaid minimum wages, failure to pay wages timely, during
employment and at the termination of employment, failure to maintain payroll
records as required by law, class claims, collective claims, representative claims,
restitution, injunctive relief, declaratory relief and other equitable relief, liquidated
damages, waiting-time penalties, penalties of any nature, unfair competition,
unlawful business practices, unfair business practices, fraudulent business practices,
other compensation or benefits including 401K benefits or matching benefits,
retirement or deferred compensation benefits claimed on account of alleged unpaid
wages, interest, attorneys' fees and costs, from December 15, 2006, through and
including the date of final approval of the Settlement, along with Plaintiffs' prayer for
damages including unpaid wages and overtime wages, prejudgment interest on
unpaid wages and overtime wages, penalties (including, but not limited to penalties
under the California Private Attorney's General Act), liquidated damages, restitution,

27 ² On February 10, 2012, the Court appointed Egan Young, Attorneys at Law; Shepherd, Finkelman, Miller &
28 Shah, LLP; and The Downey Law Firm as Class Counsel ("Class Counsel") and appointed the named Plaintiffs as Class
Representatives. (Doc. 35.)

1 injunctive relief, post judgment interest, attorneys' fees and costs ("Released
2 Claims"). The Released Claims do not include workers' compensation claims or any
3 claims arising out of the employment relationship that are not enumerated as
4 Released Claims, such as wrongful termination, discrimination, harassment, or
5 retaliation. By and through this Settlement, each Class Member forever agrees he/she
6 shall not be entitled to pursue, accept or recover damages for any Released Claims
7 against the Released Parties from December 15, 2006 through and including the date
8 of final approval of the Settlement.

9 (Doc. 29-1, Settlement Agreement, ¶ 19.)

10 **D. Notice to the Class Members**

11 The procedures for giving notice to the Class Members, as set forth in the parties' Settlement
12 Agreement (*see* Doc. 29-1, Settlement Agreement, ¶ 17) and ordered in the Court's Preliminary
13 Approval Order (Doc. 35), have been carried out by the Settlement Administrator, Heffler Claims
14 Administration, a division of Heffler, Radetich & Saitta, LLP, Certified Public Accountants
15 ("Heffler"). (Doc. 38-3, Hamer Decl.) On March 7, 2012, Heffler received the Notice, which was
16 approved by the parties prior to mailing. (Doc. 38-3, Hamer Decl., ¶¶ 6-7.) The Notice summarized
17 the Settlement Agreement's principal terms, provided Class Members with an estimate of how much
18 they would be paid if the Settlement Agreement received final approval, and advised Class Members
19 how to submit claims for payment, opt out of the Settlement, or object to the Settlement. (*See* Doc.
20 29-2.) The Notice was approved by the Court in its February 10, 2012, Preliminary Approval Order.
21 (Doc. 35.)

22 On March 7, 2012, counsel for Defendant provided Heffler with a list ("Class List") of all
23 Class Members' names, their last known mailing addresses and telephone numbers, Social Security
24 Numbers, and other information necessary to calculate estimated Settlement payments. (Doc. 38-3,
25 Hamer Decl., ¶ 7.) The Class List contained data for 2,055 potential Class Members. (Doc. 38-3,
26 Hamer Decl., ¶ 7.)

27 On March 28, 2012, Notices were mailed to 2,055 Class Members contained in the Class List
28 via first class mail. (Doc. 38-3, Hamer Decl., ¶ 9.) The Notice advised Class Members that they
could submit a Request for Exclusion or a Dispute to be post-marked by May 14, 2012. (Doc. 38-3,
Hamer Decl., ¶ 9.) Heffler received 119 undeliverable Notices, five of which were returned with
forwarding addresses and were promptly re-mailed. (Doc. 38-3, Hamer Decl., ¶ 10.) Of the

1 remaining 114 Notices, Heffler performed address traces on each of them and the Notices were re-
2 mailed. (Doc. 38-3, Hamer Decl., ¶ 10.) Of the total 114 Notices mailed to the traced addresses, a
3 total of 17 were returned as undeliverable a second time and no further processing was performed.
4 (Doc. 38-3, Hamer Decl., ¶ 10.)

5 No Class Members wrote to dispute the number of weeks he or she worked or the
6 approximate total Settlement Award. (Doc. 38-3, Hamer Decl., ¶ 11.) Heffler received two Opt-Out
7 requests, and no Objections to the Settlement were received. (Doc. 38-3, Hamer Decl., ¶¶ 12-13.)
8 At the August 1, 2012, and November 14, 2012, hearings on this motion, counsel for both parties
9 stated that the information provided by Heffler was current and had not changed.

10 IV. DISCUSSION

11 A. Final Approval of the Class-Action Settlement is Granted

12 1. The Rule 23(a) Class-Certification Requirements Are Satisfied

13 Federal Rule of Civil Procedure 23(e) requires court approval of class action settlements.
14 "[I]n the context of a case in which the parties reach a settlement agreement prior to class
15 certification, courts must peruse the proposed compromise to ratify both the propriety of the
16 certification and the fairness of the settlement." *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir.
17 2003). In confirming the propriety of class certification, courts assess the following prerequisites
18 pursuant to Rule 23(a): "(1) numerosity of plaintiffs; (2) common questions of law or fact
19 predominate; (3) the named plaintiff's claims and defenses are typical; and (4) the named plaintiff
20 can adequately protect the interests of the class." *Hanlon v. Dataproducts Corp.*, 976 F.2d 497, 508
21 (9th Cir. 1992) (citing Fed. R. Civ. P. 23(a)).

22 a. Numerosity

23 Numerosity requires that the class be so numerous that the joinder of individual class
24 members would be impracticable. Fed. R. Civ. P. 23(a)(1). Across the Settlement Class, 2,055
25 Class Members were ultimately identified. The number of Class Members in this case indicates that
26 the numerosity factor has been satisfied. *See, e.g., Jordan v. L.A. Cnty.*, 669 F.2d 1311, 1319 (9th
27 Cir. 1982) (indicating that class sizes of 39, 64, and 74 are sufficient to satisfy the numerosity
28 requirement), *vacated on other grounds*, 459 U.S. 810 (1982).

1 **b. Commonality**

2 Rule 23(a) also requires "questions of law or fact common to the class." Commonality exists
3 when there is either a common legal issue stemming from divergent factual predicates or a common
4 nucleus of facts resulting in divergent legal theories. *Hanlon v. Chrysler Corp.* ("*Chrysler Corp.*"),
5 150 F.3d 1011, 1019 (9th Cir. 1998). In other words, commonality is generally satisfied where, as
6 in this case, "the lawsuit challenges a system-wide practice or policy that affects all of the putative
7 class members." *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001), *abrogated on other*
8 *grounds by Johnson v. California*, 543 U.S. 499, 504-05 (2005). As clarified in *Wal-Mart Stores,*
9 *Inc. v. Dukes* ("*Dukes*"), a plaintiff must demonstrate that the class members "have suffered the same
10 injury" and that their claims "depend upon a common contention . . . of such a nature that is capable
11 of classwide resolution – which means that determination of its truth or falsity will resolve an issue
12 that is central to the validity of each one of the claims in one stroke." __ U.S. __, 131 S. Ct. 2541,
13 2551 (2011) (internal citation omitted).

14 The Class Members' claims arising from Defendant's alleged uniform employment policies
15 asserted here differ from those found insufficient to establish commonality in *Dukes*, 131 S. Ct. at
16 2554. In *Dukes*, the purported commonality was a lack of common control over a business practice.
17 *Id.* at 2554-55. The Supreme Court determined that the "only corporate policy that the plaintiffs'
18 evidence convincingly establishes is Wal-Mart's 'policy' of *allowing discretion* by local supervisors
19 over employment matters." *Id.* at 2554. The Court noted that, "[o]n its face, of course that is just
20 the opposite of a uniform employment practice that would provide the commonality needed for a
21 class action; it is a policy *against having* uniform employment practices." *Id.* The Court concluded
22 that there was no specific employment practice that tied all of the putative class members together
23 and that "[m]erely showing that Wal-Mart's policy of discretion has produced an overall sex-based
24 disparity does not suffice." *Id.* at 2556.

25 Here, there is no evidence before the Court that the pay practices alleged to violate the FLSA
26 and the California Labor Code were applied inconsistently, such that the complained-of employment
27 practices do not "touch and concern all members of the class." *Id.* at 2557 n. 10 (internal citations
28 omitted).

1 The parties have agreed for purposes of settlement only that the Class Members share
2 common questions of law and fact as to whether Defendant violated the FLSA and multiple
3 California Labor Code provisions, including, but not limited to, the requirement to pay overtime and
4 to provide meal and rest periods, proper wage statements, and payment of all wages upon
5 termination. These common questions of law or fact are sufficient to satisfy the commonality
6 requirement.

7 **c. Typicality**

8 Typicality exists when "the claims or defenses of the representative are typical of the claims
9 or defenses of the class." Fed. R. Civ. P. 23(a)(3). "Typicality . . . is said . . . to be satisfied when
10 each class member's claim arises from the same course of events, and each class member makes
11 similar legal arguments to prove the defendant's liability." *Armstrong*, 275 F.3d at 868. Under the
12 Rule's "permissive standards," representative claims are typical if they are "reasonably co-extensive
13 with those of absent class members; they need not be substantially identical." *Chrysler Corp.*,
14 150 F.3d at 1020.

15 Plaintiffs' claims are "co-extensive" with the other Class Members, as Plaintiffs and the
16 absent Class Members were all Defendant's employees who were paid under the same pay practices
17 and worked under the same company-wide employment policies. The typicality requirement is
18 satisfied.

19 **d. Adequacy of Representation**

20 The final Rule 23(a) prerequisite, adequacy of representation, is satisfied if "the
21 representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P.
22 23(a)(4). The satisfaction of constitutional due process concerns requires that absent class members
23 be afforded adequate representation prior to an entry of judgment, which binds them. *Chrysler*
24 *Corp.*, 150 F.3d at 1020. Determining the adequacy of representation requires consideration of two
25 questions: "(1) do the named plaintiffs and their counsel have any conflicts of interest with other
26 class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously
27 on behalf of the class?" *Id.*

1 The adequacy-of-representation requirement is met here because Plaintiffs have the same
2 interests as the absent Class Members, e.g., obtaining payment for wages unlawfully withheld.
3 Further, there is no apparent conflict of interest between the named Plaintiffs' claims and those of
4 the other Class Members, particularly because the named Plaintiffs have no separate and individual
5 claims apart from the Class.

6 Moreover, here there are no allocation dilemmas among the Settlement Class similar to those
7 observed as issues in *Amchen Products, Inc. v. Windsor*, 521 U.S. 591 (1997). In *Amchen*, the
8 settlement agreement eliminated all present and future claims against asbestos manufacturers, and
9 the class counsel was attempting to represent both groups of plaintiffs, i.e., those who had present
10 claims and those who had future claims. The conflict between the two groups of plaintiffs was that
11 "the present plaintiffs had a clear interest in a settlement that maximized current funds, while future
12 plaintiffs had a strong interest in preserving funds for their future needs and protecting the total fund
13 against inflation." *Chrysler Corp.*, 150 F.3d at 1020-21 (discussing *Amchen*, 521 U.S. 591 (1997)).
14 Here, the case does not involve sub-classes or classes with diverging interests with respect to
15 allocation of the settlement funds in the same manner as *Amchen*. The Court does not perceive any
16 conflicts of interest between Plaintiffs, Class Counsel, and other Class Members.

17 In considering the adequacy requirement, the Court also evaluates whether Plaintiffs and
18 Class Counsel will pursue the Class' claims with vigor. The Ninth Circuit has held that, "[a]lthough
19 there are no fixed standards by which 'vigor' can be assayed, considerations include competency of
20 counsel and, in the context of a settlement-only class, an assessment of the rationale for not pursuing
21 further litigation." *Chrysler Corp.*, 150 F.3d at 1021. There is no challenge to the competency of
22 the Class Counsel, and the Court finds that Plaintiffs are represented by experienced and competent
23 counsel who have litigated numerous class action cases, including 24 wage and hour and other
24 employment law class actions. (Supp. Submission., Doc. 51, 3:22-5:18.) Further, this is not a case
25 where the Class Members receive no monetary distribution while the Class Counsel are rewarded
26 amply. *Chrysler Corp.*, 150 F.3d at 1021.

27 The apparent rationale to settle this case was supported, in part, by the impossibility of
28 predicting any litigation result with certainty and by the pendency of *Brinker Restaurant Corp. v.*

1 *Superior Court*, 165 Cal. App. 4th 25 (2008), *aff'd in part*, 53 Cal. 4th 1004 (2012) ("*Brinker*")
2 before the California Supreme Court at the time the matter was settled. (Doc. 38-1, 20:2-19.)
3 California law, as it related to certain Class' claims, was in potential flux, and settlement, rather than
4 continued litigation, was perceived as more beneficial to the Class Members. *Brinker* was pending
5 during most of the instant litigation and during the time the parties entered into their Settlement
6 Agreement; the parties mediated the issues in this action and reached a settlement on September 28,
7 2011, whereas *Brinker* was decided on April 12, 2012. (See Doc. 29, Young Decl. in Support of
8 Preliminary Approval, ¶ 7; *Brinker*, 53 Cal. 4th at 1004 .) In other words, it appears that the
9 settlement was reached for strategic reasons that benefitted the Class, rather than Class Counsel's
10 inability or unwillingness to pursue further litigation. See *Chrysler Corp.*, 150 F.3d at 1021 (class
11 counsel inadequate by definition where counsel demonstrates an inability or unwillingness to try the
12 case). In sum, the Court finds that the adequacy factor is satisfied.

13 **e. Conclusion**

14 As initially determined in the Court's preliminary approval order (Doc. 35) and as set forth
15 above, the Rule 23(a) requirements for class certification have been satisfied.

16 **2. The Rule 23(b)(3) Requirements are Satisfied**

17 In addition to meeting the requirements of Rule 23(a), to be certified, a class must also meet
18 at least one of the requirements of Rule 23(b). Plaintiffs assert that class resolution is superior to
19 other available methods for the fair and efficient adjudication of the controversy and the
20 requirements of Rule 23(b) are met. (Doc. 38-1, 16:15-17:24.) Pursuant to Rule 23(b)(3), a class
21 action may be maintained if:

- 22 (3) the court finds that the questions of law or fact common to class members
23 predominate over any questions affecting only individual members, and that
24 a class action is superior to other available methods of fairly and efficiently
25 adjudicating the controversy. The matters pertinent to these findings include:
- 26 (A) the class members' interests in individually controlling the
27 prosecution or defense of separate actions;
 - 28 (B) the extent and nature of any litigation concerning the controversy
already begun by or against class members;
 - (C) the desirability or undesirability of concentrating the litigation of the
claims in the particular forum; and

1 (D) the likely difficulties in managing a class action.

2 Certification under Rule 23(b)(3) is appropriate whenever the interests of the parties can be served
3 best by settling their differences in a single action. Courts refer to the requirements of Rule 23(b)(3)
4 as its "predominance" and "superiority" requirements. *Amchen*, 521 U.S. at 615.

5 **a. Predominance**

6 As the Rule 23(a)(3) analysis already considers the issue of commonality, the focus of the
7 Rule 23(b)(3) predominance inquiry is on the balance between individual and common issues.
8 *Chrysler Corp.*, 150 F.3d at 1022. In other words, "[t]he Rule 23(b)(3) predominance inquiry tests
9 whether proposed classes are sufficiently cohesive to warrant adjudication by representation."
10 *Amchen*, 521 U.S. at 623. The "main concern in the predominance inquiry . . . [is] the balance
11 between individual and common issues." *In re Wells Fargo Home Mortg. Overtime Pay Litig.*,
12 571 F.3d 953, 959 (9th Cir. 2009). "Implicit in the satisfaction of the predominance test is the notion
13 that the adjudication of common issues will help achieve judicial economy." *Zinser v. Accufix*
14 *Research Inst., Inc.*, 253 F.3d 1180, 1189 (9th Cir. 2001) (citation omitted), *amended*, 273 F.3d 1266
15 (9th Cir. 2001).

16 The parties' Settlement Agreement sufficiently demonstrates that "[a] common nucleus of
17 facts and potential legal remedies dominates this litigation." *Chrysler Corp.*, 150 F.3d at 1022. If
18 individual Class Members were to sue individually, members of the same proposed settlement class
19 would bring essentially the same claims against Defendant. The central issues raised by the
20 complaint concern policies and practices of Defendant which apply broadly to all the employees in
21 the proposed settlement class. Similar to *Wright v. Linkus Enterp., Inc.*, 259 F.R.D. 468 (E.D. Cal.
22 2009), this case derives from policies that allegedly required Class Members to work, for example,
23 without compensation for meal and rest periods. The alleged company-wide and uniform
24 employment policies comprise a common nucleus of facts for employees in the settlement class.
25 *Kamar v. Radio Shack Corp.*, 254 F.R.D. 387, 399 (C.D. Cal. 2008) (class certification is usually
26 appropriate where "liability turns on an employer's uniform policy that is uniformly implemented,
27 since in that situation predominance is easily established"); *see also Perez v. Safety-Kleen Sys., Inc.*,
28 253 F.R.D. 508, 520 (N.D. Cal. 2008) (common issues predominate meal break claims and claims

1 for failure to provide itemized wage statements because these were class-wide policies, and litigation
2 of these claims involve class-wide proof rather than individualized inquiry). Moreover, the alleged
3 violations of state law entitle the Class Members to the same legal remedies.

4 "When common questions present a significant aspect of the case and they can be resolved
5 for all members of the class in a single adjudication, there is clear justification for handling the
6 dispute on a representative rather than on an individual basis." *Chrysler Corp.*, 150 F.3d at 1022
7 (citations omitted). Thus, despite minor factual differences among Class Members, such as the
8 number of hours or weeks worked, common issues predominate.

9 **b. Superiority**

10 In addition to the predominance requirement, Rule 23(b)(3) provides a non-exhaustive list
11 of matters relevant to the Court's determination that class action treatment is superior to other
12 methods of adjudication. Rule 23(b)(3)(A)-(D). The first factor considers the interest of each
13 member in "individually controlling the prosecution or defense of separate actions." Rule
14 23(b)(3)(A). This factor weighs against class certification where each class member has suffered
15 sizeable damages or has an emotional stake in the litigation. *See, e.g., In re N. Dist. of Cal., Dalkon*
16 *Shield IUD Prods. Liab. Litig.*, 693 F.2d 847, 856 (9th Cir. 1982), *abrogated on other grounds in*
17 *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227 (9th Cir. 1996). In this case, where monetary
18 damages that each Class Member suffered individually are relatively modest, certifying a class action
19 is favored. *Id.*

20 The second factor to consider is "the extent and nature of any litigation concerning the
21 controversy already begun by or against members of the class." Fed. R. Civ. P. 23(b)(3)(B). The
22 only known litigation concerning the controversy is the instant case, and thus this factor favors
23 certification.

24 The third Rule 23(b)(3) factor is "the desirability or undesirability of concentrating the
25 litigation of the claims in the particular forum" (Fed. R. Civ. P. 23(b)(3)(C)), and the fourth factor
26 is "the likely difficulties in managing a class action" (Fed. R. Civ. P. 23(b)(3)(D)). The fourth factor
27 "encompasses the whole range of practical problems that may render the class format inappropriate
28 for a particular suit." *Eisen v. Carlisle & Jacqueline*, 417 U.S. 156, 164 (1974). In the context of

1 settlement, however, the third and fourth factors are rendered moot and are irrelevant. *See Amchem*,
2 521 U.S. at 620 (where a district court is confronted with a settlement-only class certification, the
3 court need not inquire whether the case, if tried, would present manageability problems because the
4 point is that there will be no trial).

5 "Where classwide litigation of common issues will reduce litigation costs and promote
6 greater efficiency, a class action may be the superior method for managing litigation if no realistic
7 alternative exists." *Valentino*, 97 F.3d at 1234. The potential recovery by any individual plaintiff
8 is relatively small and thus individual members of the class would likely be unwilling or unable to
9 institute separate suits. Further, the filing of individual suits by 2,055 separate plaintiffs would
10 create an unnecessary burden on judicial resources.

11 In sum, the Rule 23(b)(3) predominance and superiority requirements are satisfied.

12 c. Conclusion

13 For the reasons set forth above, the Settlement Class meets the class-certification
14 requirements of Rules 23(a) and 23(b)(3).

15 3. The Proposed Settlement is Fair, Reasonable, and Adequate

16 Settlements are afforded a presumption of fairness if (1) the negotiations occurred at arm's
17 length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in
18 similar litigation; and (4) only a small fraction of the class objected. 4 William B. Rubenstein, Alba
19 Conte, & Herbert B. Newberg, *Newberg on Class Actions* § 11.41 (4th ed. West 2012). Here, the
20 parties' settlement was reached through the efforts of experienced counsel following mediation with
21 a mediator who has experience handling wage and hour class action disputes. Further, there was
22 sufficient discovery conducted by experienced Class Counsel, and there were no objections and only
23 two requests for exclusion to the settlement. The settlement is thus entitled to a presumption of
24 fairness.

25 A settlement may be approved only after a hearing and on finding that it is fair, reasonable,
26 and adequate. Fed. R. Civ. P. 23(e)(1)(c). Such approval is required to ensure that any settlement
27 reached is consistent with the plaintiff's fiduciary obligations to the class. *See Ficalora v. Lockheed*
28 *Cal. Co.*, 751 F.2d 995, 996 (9th Cir. 1985). The court also serves as guardian for the absent class

1 members who will be bound by the settlement, and therefore must independently determine the
2 fairness of any settlement. *Id.* However, the court's role in intruding upon what is otherwise a
3 private consensual agreement is limited to the extent necessary to reach a reasoned judgment that
4 the agreement is not the product of fraud or collusion between the negotiating parties, and that the
5 settlement, taken as a whole, is fair, reasonable, and adequate to all concerned. *FDIC v. Alshuler*
6 (*In re Imperial Corp. of Am.*), 92 F.3d 1503, 1506 n.5 (9th Cir. 1996). Therefore, the settlement
7 hearing is not meant to be conducted as a trial or rehearsal for trial on the merits. *Officers for Justice*
8 *v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982).

9 In determining whether a proposed settlement is "fair, reasonable, and adequate" pursuant
10 to Rule 23(e), courts may consider factors including (1) the strength of the case; (2) the risk, expense,
11 complexity, and likely duration of further litigation; (3) the risk of maintaining class action status
12 throughout the trial; (4) the settlement amount; (5) the extent of discovery completed and the stage
13 of the proceedings; (6) whether the class has been fairly and adequately represented during the
14 settlement negotiations; and (7) the reaction of the class to the proposed settlement. *See Churchill*
15 *Village, LLC v. Gen. Elec.*, 361 F.3d 566, 575-76 (9th Cir. 2004) (citing *Chrysler Corp.*, 150 F.3d
16 at 1026).

17 **a. The Strength of Plaintiffs' Case**

18 The initial fairness factor addresses Plaintiffs' likelihood of success on the merits and the
19 range of possible recovery. *See Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 964-65 (9th Cir.
20 2009). In determining the probability of the plaintiff's success on the merits, there is no "particular
21 formula by which that outcome must be tested." *Id.* at 965. Instead, the court's assessment is based
22 on "nothing more than an amalgam of delicate balancing, gross approximations and rough justice."
23 *Officers for Justice*, 688 F.2d at 625 (citation and quotation marks omitted). The court is not
24 required to "reach any ultimate conclusions on the contested issues of fact and law which underlie
25 the merits of the dispute, for it is the very uncertainty of the outcome in litigation and avoidance of
26 wasteful and expensive litigation that induce consensual settlements." *Id.* Rather, the court may
27 presume that, through negotiation, the parties, their counsel, and the mediator arrived at a reasonable
28 range of settlement by considering Plaintiffs' likelihood of recovery. *See Rodriguez*, 563 F.3d at 965

1 ("We put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution
2 . . . ").

3 Plaintiffs acknowledge that there may have been "significant legal and factual hurdles that
4 otherwise may have prevented the Class from obtaining any recovery at all. The outcome of class
5 certification, trial and any attendant appeals, were inherently uncertain." (*See* Doc. 38-1, 20:1-3; *see*
6 *also* Doc. 29, Young Decl. in Support of Preliminary Approval, ¶ 9.) This uncertainty potentially
7 increased in light of the California Supreme Court's decision in *Brinker* which states that while it is
8 the employer's obligation to provide a meal break for the employee, "the employee thereafter [is] at
9 liberty to use the meal period for whatever purpose he or she desires, but the employer need not
10 ensure that no work is done." *Brinker*, 53 Cal. 4th at 1017. As noted above, *Brinker* was pending
11 during a substantial portion of the instant litigation and during the time the parties entered into their
12 Settlement Agreement. (*See* Doc. 29, Young Decl. in Support of Preliminary Approval, ¶ 7
13 (establishing that the parties mediated the issue on reached a settlement on September 28, 2011
14 (*Brinker* was decided on April 12, 2012)).) The fact that the law was uncertain was a factor in
15 Plaintiffs' assessing the risk and determining that settlement conferred a substantial benefit on the
16 Class.

17 Plaintiffs also considered the costs and risks associated with class certification and trial. The
18 high risk, expense, and nature of a lengthy class action trial supported settlement at this stage of the
19 litigation.

20 Therefore, although Plaintiffs maintain their strong belief in the underlying merits of the case,
21 Class Counsel has acknowledged the weaknesses in the meal and rest break claims and has
22 considered the uncertainties surrounding proving the claims in a lengthy and complex jury trial in
23 negotiating the settlement amount. As a result, Plaintiffs' likelihood of success appears to have been
24 properly accounted for in the settlement amount. Accordingly, this factor weighs in favor of
25 approval.

26 ///

27 ///

28 ///

1 **b. The Risk, Expense, Complexity, and Likely Duration of Further**
2 **Litigation**

3 The risk, expense, complexity, and likely duration of further litigation are factors that
4 consider "the probable costs, in both time and money, of continued litigation." *In re Warfarin*
5 *Sodium Antitrust Litig.*, 212 F.R.D. 231, 254 (D.Del. 2002). Generally, "unless the settlement is
6 clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation
7 with uncertain results." *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D.
8 Cal. 2004) (citation omitted). Moreover, settlement is encouraged in class actions where possible.
9 *See Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976) ("It hardly seems necessary
10 to point out that there is an overriding public interest in settling and quieting litigation. This is
11 particularly true in class action suits which are now an ever increasing burden to so many federal
12 courts and which present serious problems of management and expense.").

13 In this case, there remained significant procedural hurdles for the putative class to confront,
14 including certification of the class. Avoiding such unnecessary expenditures of resources and time
15 benefits all the parties and the Court. Moreover, there were significant risks in continued litigation
16 and no guarantee of recovery given the current state of the law due to the pendency of *Brinker*,
17 particularly as it related to the meal break claims. The settlement, therefore, provides Class
18 Members with another significant benefit that they would not receive if the case proceeded – certain
19 and prompt relief. *See Oppenlander v. Standard Oil Co.*, 64 F.R.D. 597, 624 (D. Colo. 1974) ("It
20 has been held proper to take the bird in hand instead of a prospective flock in the bush."). This factor
21 weighs in favor of approval.

22 **c. The Risk of Maintaining Class Action Status Throughout the Trial**

23 A settlement in this case was reached prior to the Supreme Court's recent decision in *Brinker*.
24 Given the recent decision by the California Supreme Court in that case, class certification for
25 Plaintiffs' claim regarding missed meal breaks would be more difficult. *See Brinker*, 53 Cal. 4th at
26 1040 (holding employer is required to provide a meal period to employees, but "is not obligated to
27 police meal breaks and ensure no work thereafter is performed"). On the other hand, the fact that
28 one claim may not be amenable to class treatment does not necessarily affect the propriety of class

1 certification with respect to other claims of the class or necessarily impact the ability to maintain
2 class-action status throughout trial. *See generally Norris-Wilson v. Delta-T Grp., Inc.*, 270 F.R.D.
3 596, 612 (S.D. Cal. 2010) (granting class certification and finding that "[t]he overtime, wage
4 statement, and waiting time claims are suitable for class-wide treatment, but the meal and rest break
5 and reimbursement claims aren't"). Because the Court is not aware of any risks to maintaining
6 class-action status throughout trial, this factor is neutral. *See In re Veritas Software Corp. Sec. Litig.*,
7 No. 03-0283, 2005 WL 3096079, at *5 (N.D. Cal. Nov. 15, 2005) (*vacated in part on other grounds*,
8 496 F.3d 962 (9th Cir. 2007)) (favoring neither approval nor disapproval of settlement where the
9 court was "unaware of any risk involved in maintaining class action status"); *Vasquez v. Coast Valley*
10 *Roofing, Inc.*, 266 F.R.D. 482, 489 (E.D. Cal. 2010) (finding that there were no facts that would
11 defeat class treatment, the factor was considered "neutral" for purposes of final approval of class
12 settlement).

13 **d. The Settlement Amount**

14 "[S]ettlement is about compromise, a yielding of the highest hopes in exchange for certainty
15 and resolution." *In re Warfarin*, 212 F.R.D. at 257-58. Class counsel negotiated a Settlement
16 Amount of \$2,500,000 payable to the class, without any reversion to Defendant. The Settlement also
17 provides for (1) Class Representative Enhancement Awards of \$7,000 each to the two named
18 Plaintiffs; (2) a \$10,000 payment to the California Labor and Workforce Development Agency
19 ("LWDA") for PAGA penalties, of which \$7,500 will be paid to the State of California and the
20 remainder benefitting the Class; (3) an amount not to exceed \$30,000 payable to the Claims
21 Administrator; (4) a Class Counsel award of \$825,000 (representing 33% of the Settlement Amount);
22 and (5) legal costs in the amount of \$30,000.

23 Although a larger award was theoretically possible, "the very essence of a settlement is
24 compromise, a yielding of absolutes and an abandoning of highest hopes." *Linney v. Cellular Alaska*
25 *P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998) (internal citations and quotation marks omitted).
26 Moreover, the response of the Class has been positive. No objections have been filed and less than
27 one percent of the Class opted out. (Doc. 38-3, Hamer Decl., ¶¶ 12-13.) In light of the claims at
28

1 issue in this case and the size of the proposed settlement class, the Settlement Amount appears fair
2 and reasonable and this factor weighs in favor of final approval.

3 **e. The Extent of Discovery Completed and the Stage of the Proceedings**

4 "A settlement following sufficient discovery and genuine arms-length negotiation is
5 presumed fair." *DIRECTV*, 221 F.R.D. at 528. What is required is that "sufficient discovery has
6 been taken or investigation completed to enable counsel and the court to act intelligently." Herbert
7 B. Newberg, *Newberg on Class Actions* § 11.41 (4th ed. 2012). Here, Plaintiffs' counsel expended
8 significant time and resources conducting formal discovery, including pre-complaint factual
9 investigation, formal and informal written discovery, and the taking and defense of numerous
10 depositions. (Doc. 29, Young Decl. in Support of Preliminary Approval, ¶ 5.) Class counsel
11 exchanged preliminary disclosures, declaration, and thousands of pages of documents, including
12 company policies, compensation and time-keeping records, and conducted a day-long inspection of
13 Defendant's Dinuba, California production facility. (Doc. 29, Young Decl. in Support of Preliminary
14 Approval, ¶ 5.) Additionally, Plaintiffs' counsel conducted dozens of in-person interviews with
15 Class Members and obtained 27 declarations. (Doc. 29, Young Decl. in Support of Preliminary
16 Approval, ¶ 6.) The Court finds that sufficient discovery has been conducted, and this factor weighs
17 in favor of approval.

18 **f. Whether the Class has been Fairly and Adequately Represented During**
19 **the Settlement Negotiations**

20 In considering the adequacy of the terms of a settlement, the trial court is entitled to, and
21 should, rely upon the judgment of experienced counsel for the parties. *See DIRECTV, Inc.*,
22 221 F.R.D. at 528 ("Great weight is accorded to the recommendation of counsel, who are most
23 closely acquainted with the facts of the underlying litigation") (internal quotation marks and citations
24 omitted). This reliance is predicated on the fact that "[p]arties represented by competent counsel are
25 better positioned than courts to produce a settlement that fairly reflects each party's expected
26 outcome in the litigation." *In re Pacific Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995).

27 Here, the experience and view of Class Counsel weighs in favor of approving the Settlement.
28 Class Counsel understood the complex risks and benefits of any settlement and concluded that the

1 proposed Settlement was a reasonable recovery that confers a substantial benefit on the Class
2 Members. (Doc. 29, Young Decl. in Support of Preliminary Approval, ¶ 6.) Moreover, Class
3 Counsel is experienced in this area of law and the settlement was reached after mediation conducted
4 by an experienced wage-and-hour mediator. This factor weighs in favor of approval.

5 **g. The Reaction of the Class to the Proposed Settlement**

6 Where a settlement agreement enjoys overwhelming support from the class, this lends weight
7 to a finding that the settlement agreement is fair, adequate, and reasonable. *DIRECTV, Inc.*,
8 221 F.R.D. at 529 ("It is established that the absence of a large number of objections to a proposed
9 class action settlement raises a strong presumption that the terms of a proposed class settlement
10 action are favorable to the class members."); *see also Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 624
11 (N.D. Cal. 1979) (finding that objections from only 16 percent of the class was persuasive that the
12 settlement was adequate).

13 Here, Class Notice was mailed to 2,055 Class Members and only 2 Class Members have
14 opted out (less than one percent). (Doc. 38-3, Hamer Decl., ¶¶ 12-13.) Further, no objection to the
15 Settlement Agreement was received, and no Class Member appeared at either final approval hearing
16 to state any objection. The response of the class was positive, and this weighs in favor of finding
17 that the settlement is favorable to the Class Members.

18 **4. The Proposed Payment to the Claims Administrator is Reasonable**

19 The \$30,000 that Plaintiffs request be approved as payment to the Claims Administrator
20 appears fair and reasonable. The fee requested here comports with other Claims Administration fees
21 in similar class-action settlements, particularly in light of the number of Notice Packets that the
22 Claims Administrator was required to process. *See, e.g., Garcia v. Gordon Trucking*, No. 1:10-CV-
23 0324-AWI-SKO, 2012 WL 5364575, at *3 (E.D. Cal. Oct. 31, 2012) (approving \$25,000
24 administrator fee awarded in wage and hour case involving 1,868 potential class members); *Harris*
25 *v. Vector Marketing Corp.*, No. C-08-5198 EMC, 2012 WL 381202, at *6 (N.D. Cal. Feb. 6, 2012)
26 (awarding \$250,000 in administration costs where claims administrator sent out 68,487 notices);
27 *Vasquez*, 266 F.R.D. at 484 (approving \$25,000 administrator fee awarded in wage and hour case
28

1 involving 177 potential class members). The Court finds the requested Claims Administration fee
2 is reasonable, and it shall be awarded.

3 **5. The Proposed PAGA Payment is Reasonable**

4 A settlement reached between the parties on a PAGA claim is subject to court review and
5 approval. Cal. Lab. Code § 2699(l). Pursuant to the Settlement Agreement, Defendant has agreed
6 to pay \$10,000 as civil penalties pursuant to the PAGA, codified at California Labor Code §§ 2699,
7 *et seq.* Of the \$10,000, 75 percent (\$7,500) will be paid to the State of California, and the remainder
8 (\$2,500) will benefit the class. *See* Cal. Lab. Code § 2699(I) (mandating 75/25 division of recovered
9 PAGA civil penalties between to the California Labor and Workforce Development Agency
10 ("LWDA") and aggrieved employees). This total amount comports with settlement approval of
11 PAGA awards in other cases. *See, e.g., Garcia*, 2012 WL 5364575, at *3 (approving PAGA
12 settlement payment of \$10,000 out of the \$3.7 million common-fund settlement); *Chu v. Wells Fargo*
13 *Investments, LLC*, No. C 05-4526 MHP, C 06-7924 MHP, 2011 WL 672645, at * 1 (N.D. Cal. Feb.
14 16, 2011) (approving PAGA settlement payment of \$7,500 to the LWDA out of \$6.9 million
15 common-fund settlement). The Court finds that the PAGA payment is set at a reasonable amount,
16 and it shall be approved.

17 **6. Conclusion**

18 In sum, as set forth above, the relevant factors weigh in favor of approving the parties'
19 Settlement Agreement. It represents a substantial recovery that avoids the risks associated with
20 protracted litigation in a document-intensive wage-and-hour case. The parties' Settlement
21 Agreement is found to be fair and reasonable and is hereby APPROVED.

22 **B. Plaintiffs' Request for Attorneys' Fees is Approved**

23 The parties' Settlement Agreement provides "Defendant agrees to pay Class Counsel's
24 attorneys' fees in the amount of \$825,000 (33% of the Maximum Settlement Amount) and costs of
25 not more than \$30,000 from the Maximum Settlement Amount as approved by the Court." (Doc.
26 29-1, ¶16.)

27 Federal Rule of Civil Procedure 23(h) provides that, "[i]n a certified class action, the court
28 may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the

1 parties' agreement." Fed. R. Civ. P. 23(h). Courts have recognized the "common fund" or "common
2 benefit" doctrine, under which attorneys who create a common fund or benefit for a group of persons
3 may be awarded their fees and costs to be paid out of the fund. See *Chrysler Corp.*, 150 F.3d at
4 1029. "[A] lawyer who recovers a common fund for the benefit of persons other than himself or his
5 client is entitled to a reasonable attorney's fee from the fund as a whole." *Staton*, 327 F.3d at 972
6 (quoting *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)). Awarding a percentage of the
7 common fund is particularly appropriate "when each member of a certified class has an undisputed
8 and mathematically ascertainable claim to part of a lump-sum judgment recovered on his behalf."
9 *Id.* (quoting *Van Gemert*, 444 U.S. at 478-79) (internal quotation marks omitted).

10 Here, where the Settlement applies a distribution formula pursuant to which each Class
11 Member whose Notice is not returned as undeliverable will receive a mathematically ascertainable
12 payment, application of the percentage of common fund doctrine is appropriate. The typical range
13 of acceptable attorneys' fees in the Ninth Circuit is 20 percent to 33.3 percent of the total settlement
14 value, with 25 percent considered a benchmark percentage. *Powers v. Eichen*, 229 F.3d 1249, 1256
15 (9th Cir. 2000). The exact percentage awarded, however, varies depending on the facts of the case,
16 and "in most common fund cases, the award exceeds the benchmark" percentage. *Knight v. Red*
17 *Door Salons, Inc.*, 2009 WL 248367, at *3 (N.D. Cal. 2009); see also *In re Activision Sec. Litig.*, 723
18 F. Supp. 1373, 1377 (N.D. Cal. 1989) ("nearly all common fund awards range around 30%").

19 The attorneys' fees here will be awarded pursuant to federal law since the case is based on
20 federal question under the FLSA. Federal courts utilize the percentage-of-the-fund approach, and
21 use the lodestar as a "cross-check" on reasonableness of the percentage. As such, calculation of the
22 lodestar amount may be used as a cross-check to assess the reasonableness of the percentage award.
23 See *Garcia*, 2012 WL 5364575, at *8; *Bond v. Ferguson Enterprises, Inc.*, No. 1:09-CV-1662
24 OWW MJS, No. CV 06-04149 MMM (Shx), 2011 WL 2648879 (E.D. Cal. June 30, 2011)⁵;

27 ⁵ The version of the court's order in *Bond* that is published electronically on Westlaw contains a formatting error
28 such that the entire text of the order does not appear on the electronic Westlaw publication. The complete order is
located on the court's electronic docket at number 59 in case 1:09-cv-01662-OWW-MSJ.

1 *Fernandez v. Victoria Secret Stores*, No. CV 06–04149 MMM (Shx), 2008 WL 8150856 (C.D. Cal.
2 July 21, 2008); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050-51 (9th Cir. 2002).

3 **1. The Percentage Requested in Fair and Reasonable**

4 In assessing whether the percentage requested is fair and reasonable, courts generally
5 consider the following factors: (1) the results achieved; (2) the risk of litigation; (3) the skill
6 required; (4) the quality of work performed; (5) the contingent nature of the fee and the financial
7 burden; and (6) the awards made in similar cases. *Vizcaino*, 290 F.3d at 1047; *Six Mexican Workers*
8 *v. Az. Citrus Growers*, 904 F.2d 1301 (9th Cir. 1990).

9 **a. The Results Achieved**

10 The individual claims in this case concern Defendant's alleged failure to pay overtime and
11 to pay class members for meal and rest breaks. These types of claims would not generally produce
12 substantial individual damage awards. As such, the recovery of \$2,500,000 is a favorable result,
13 particularly in light of *Brinker* and the uncertainty as to the viability of the meal and rest break
14 claims. Overall, the Court finds that the results achieved are good, which is highlighted by the fact
15 that there was no objection to the settlement amount or to the attorneys' fees requested. *See*
16 *DIRECTV*, 221 F.R.D. at 529.

17 **b. The Risks Involved**

18 There were significant risks involved in this litigation. Specifically, some of the central
19 claims involved the timely provision of rest and meal periods, an issue that was pending before the
20 California Supreme Court during the time the parties were litigating the case and negotiating a
21 settlement. At the time of settlement, it was possible that any resulting decision could significantly
22 lower the potential recovery in this case. Further, the action was taken on a contingency fee basis
23 and, as such, Class Counsel invested time, effort, and money with no guarantee of recovery. There
24 were also legal and factual hurdles that may have prevented the Class from obtaining any recovery.
25 In cases where recovery is uncertain, an award of one-third of the common fund as attorneys' fees
26 has been found to be appropriate. *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir.
27 2000); *In re Heritage Bond Litig.*, No. 02-ML-1475 DT, 2005 WL 1594403, at *19, n. 14 (C.D. Cal.

1 June 10, 2005) (discussing Ninth Circuit cases awarded attorney fees of one-third of the total
2 recovery).

3 **c. Skill Required and Quality of the Work Performed**

4 The case required specialist skills to litigate the legal theories relating to wage and hour law
5 and labor law at issue in the case. Class Counsel are experienced class litigators, including in the
6 area of employment class litigation.

7 Moreover, this case was actively litigated and significant time was spent on discovery. *See*
8 *generally Navarro v. Servisair*, No. C 08-02716 MHP, 2010 WL 1729538, at *3 (N.D. Cal. Apr. 27,
9 2010) (finding proposed award of 30 percent of settlement fund unjustifiably departed from
10 benchmark due in part to speed with which parties reached a settlement). Overall, the specialized
11 skill of Class Counsel in this area of the law was generally an asset to the Class Members and the
12 quality of work performed was good.

13 **d. The Contingent Nature of the Representation**

14 Class Counsel litigated the case on a contingency fee basis, which necessarily presented
15 considerable risk. *See In re Sumitomo Copper Litig.*, 74 F. Supp. 2d 393, 396-98 (S.D.N.Y. 1999)
16 ("No one expects a lawyer whose compensation is contingent on the success of his services to
17 charge, when successful, as little as he would charge a client who in advance of the litigation has
18 agreed to pay for his services, regardless of success. Nor, particularly in complicated cases
19 producing large recoveries, is it just to make a fee dependent solely on the reasonable amount of time
20 expended."). Class Counsel contends that they assumed a very real risk in taking this case on a
21 contingency basis, investing time, effort, and money in the action with no guarantee of recovery.
22 (Doc. 38-1, 28:13-16.)

23 In considering both the contingent nature of the work performed by Class Counsel as well
24 as the risk involved in the costs advanced, these factors support the fee award requested. *See*
25 *Graham v. Daimler Chrysler Corp.*, 34 Cal. 4th 553, 580 (2004) ("A contingent fee must be higher
26 than a fee for the same legal services paid as they are performed. The contingent fee compensates
27 the lawyer not only for the legal services he renders but for the loan of those services.") (internal
28 citations omitted).

1 **e. Awards Made in Similar Cases**

2 Finally, the percentage award requested in this case is commensurate to percentage-of-the-
3 benefit awards made in other wage-and-hour actions in this district:

- 4 (1) *Garcia v. Gordon Trucking, Inc.*, No. 1:10-CV-0324 AWI SKO, 2012 WL 5364575
5 (E.D. Cal. Oct. 31, 2012) (court approving attorneys' fees in the amount of 33 percent
6 of the common fund);
- 7 (2) *Bond v. Ferguson Enterprises, Inc.*, No. 1:09-cv-01662-OWW-MJS, Docket No. 59
8 (E.D. Cal. June 30, 2011) (court approved attorneys' fees in the amount of 30 percent
9 of the common fund);
- 10 (3) *Vasquez v. Coast Valley Roofing*, 266 F.R.D. 482 (E.D. Cal. 2010) (wage-and-hour
11 action putative class-action settlement where court approved award of attorneys' fees
12 in the amount of 33.3 percent of the common fund);
- 13 (4) *Benitez v. Wilbur*, No. 1:08-cv-01122 LJO GSA, Doc. No. 52 (E.D. Cal., Dec. 15,
14 2009) (awarding 33.3 percent of the benefit to the class in attorneys' fees);
- 15 (5) *Chavez v. Petrissans*, (Case No. 1:08-cv-00122 LJO GSA, Doc. No. 89 (E.D. Cal.
16 Dec. 15, 2009) (court approved awards of attorneys' fees of 33.3 percent of the
17 common fund);
- 18 (6) *Romero v. Producers Dairy Foods, Inc.*, No. 1:05-cv-0484-DLB, 2007 WL 3492841,
19 at * 4 (E.D. Cal. Nov. 14, 2007) (class-action settlement where court approved
20 attorneys' fees in the amount of 33 percent of common fund);
- 21 (7) *Vasquez v. Jim Aartman, Inc.*, No. 1:02-cv-05624-AWI-LJO, Doc. No. 130 (class-
22 action settlement where court approved attorneys' fees in the amount of 30 percent
23 of the settlement amount);
- 24 (8) *Baganha v. Cal. Milk Transport*, No. 1:01-cv-05729-AWI-LJO, Doc. No. 147 (class-
25 action settlement where court approved attorneys' fees in the amount of 31.25 percent
26 of settlement amount); and

1 (9) *Randall Willis et al. v. Cal. Western Transport* and *Earl Baron et al. v. Cal Western*
2 *Transport* (consolidated cases), No. 1:00-cv-05695-AWI-LJO (court approved
3 attorneys' fees in the amount of 33.3 percent of the settlement amount).

4 The Settlement Agreement's provision of \$825,000 in attorneys' fees (33 percent of the total
5 settlement amount), is fair and reasonable in light of the awards of attorneys' fees in similar wage-
6 and-hour cases in this district.

7 **f. Conclusion**

8 Further, although Class Counsel's requested fees exceed the 25 percent benchmark under
9 federal law, the Court finds sufficient reasons to exceed that marker considering the risk of the
10 litigation, the contingent nature of the work, the favorable reaction of the class, and the fee awards
11 in other wage-and-hour cases. As such, the requested 33 percent of the class recovery represents a
12 reasonable fee award and is approved. *See Ozga v. U.S. Remodelers, Inc.*, No. C 09-05112 JSW,
13 2010 WL 3186971, at * 3 (N.D. Cal. Aug. 9, 2010) (departure from benchmark warranted due to
14 excellent results, reaction of the class, the risks faced due to the uncertainty of California law in
15 similar wage-and-hour cases).

16 **2. Lodestar Cross-Check**

17 Courts frequently cross-check a percentage fee request with the lodestar analysis. *See, e.g.*,
18 *Vizcaino*, 290 F.3d at 1050 (finding that "the lodestar may provide a useful perspective on the
19 reasonableness of a given percentage award"); *Bond*, 2011 WL 2648879, at *11 (finding that
20 "[c]alculation of the lodestar amount may be used as a cross-check to assess the reasonableness of
21 the percentage award").

22 "In conducting a lodestar cross-check, the court must first determine the dollar value of the
23 proposed percentage-based fee award." *In re Portal Software, Inc. Sec. Litig.* ("*Portal Software*"),
24 No. C-03-5138-VRW, 2007 WL 4171201, at *14 (N.D. Cal. Nov. 26, 2007). The requested award
25 here is \$825,000.00, which represents a requested fee of 33 percent of the \$2,500,000 Settlement
26 Amount. The next step is to cross-check the proposed percentage fee against the lodestar. *Id.*
27 "Three figures are salient in a lodestar calculation: (1) counsel's reasonable hours, (2) counsel's
28

1 reasonable hourly rate and (3) a multiplier thought to compensate for various factors (including
 2 unusual skill or experience of counsel, or the ex ante risk of nonrecovery in the litigation)." *In re*
 3 *HPL Tech., Inc. Sec. Litig.*, 366 F. Supp. 2d 912, 919 (N.D. Cal. 2005). The multiplier is calculated
 4 from the ratio of the proposed percentage fee to the computed lodestar fee and is assessed for
 5 reasonableness. *Portal Software*, 2007 WL 4171201, at *14. Where the lodestar method is used as
 6 a cross-check to the percentage method, it can be performed with a less exhaustive cataloging and
 7 review of counsel's hours. *See In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 306 (3d Cir. 2005)
 8 ("The lodestar cross-check calculation need entail neither mathematical precision nor bean-
 9 counting."); *In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1176 (S.D. Cal. 2007)
 10 ("Although counsel have not provided a detailed cataloging of hours spent, the Court finds the
 11 information provided to be sufficient for purposes of lodestar cross-check.").

12 **a. Plaintiffs' Asserted Lodestar**

13 The fees requested by Plaintiffs under the percentage of the common fund exceed Class
 14 Counsel's asserted lodestar of \$704,568.50. (Doc. 51, 6:18-14:25.) However, the fact that the
 15 lodestar amount is less than the requested fee amount of \$825,000 does not necessarily indicate that
 16 Class Counsel's request for attorneys' fees should be reduced. "[C]ourts have routinely enhanced the
 17 lodestar to reflect the risk of non-payment in common fund cases." *Vizcaino*, 290 F.3d at 1051; *see*
 18 *also Bond*, 2011 WL 2648879, at *16 (applying a risk modifier of 1.82 to the lodestar amount for
 19 the lodestar cross check). Based on the information provided in Plaintiffs' supplemental submission,
 20 Plaintiffs are requesting a lodestar multiplier of approximately 1.17. (*See* Doc. 38-1, 29:18-22 for
 21 total amount of attorneys' fees and hours worked.)

22 By declaration, Class Counsel indicates the following rates, hours, and fees of each attorney
 23 who performed work on the litigation:

24

Schedule of Fees				
Attorney	Title	Hourly Rate	Hours Worked	Total Fees
Jennifer Crewz	Legal Assistant	\$175	6.7	\$1,172.50
Elena M. DiBattista	Legal Assistant	\$185	3.4	\$629.00

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1	Philip A. Downey	Principal/Owner	\$550	501.9	\$276,045.00
2	Betsy Ferling-Hitriz	Legal Assistant	\$185	15.1	\$2,793.50
3	Brandon Lauria	Associate	\$450	21.9	\$9,855.00
4	Karen Leser-Grenon	Associate	\$450	94.1	\$42,345.00
5	Rose F. Luzon	Associate	\$450	195.1	\$87,795.00
6	James E. Miller	Principal/Partner	\$725	93.1	\$67,497.5
7	Sue Moss	Legal Assistant	\$185	4.9	\$906.50
8	Chiharu Sekino	Legal Assistant/ Law Clerk	\$185	13.2	\$2,442.00
9	James C. Shah	Principal/Partner	\$700	3.6	\$2,520.00
10	Debbie Tutler	Legal Assistant	\$175	21.8	\$3,815.00
11	Itza Vilaboy	Legal Assistant	\$175	45.8	\$8,015.00
12	Lesley Weaver	Director	\$600	141.7	\$85,020.00
13	Eric L. Young	Principal/Partner	\$625	171.3	\$107,062.50
14	Nathan Zipperian	Partner	\$550	12.1	\$6,655.00
15	Total			1,345.7	\$704,568.50

15 (Doc. 51, 6:18-14:25; Docs. 51-3, 51-4, 51-5).⁶

16 **b. Hours Reasonably Expended**

17 The Court finds the 1,345.7 hours expended on the litigation to be reasonable in light of the
18 legal issues and the amount of discovery conducted, the number of Defendant's employees included
19 in the Settlement Classes, the mediation preparation required, and motion practice with respect to
20 the Settlement Agreement. The total number of hours expended in this action is commensurate with
21 similar wage and hour class actions in this district. *See Garcia*, 2012 WL 5364575, at *8 (approving
22 2,384.73 hours expended in reaching a settlement for 1,869 class members after "extensive" law and
23 motion work, including dispositive motions); *Bond*, 2011 WL 2648879, at *12-*13 (reducing the
24 number of hours requested from 1,929.94 by a 30 percent "haircut" (to 1,350.96) for a settlement of
25 553 class members after finding that the initial amount sought was not justified). While the law and
26

27 ⁶ The total hours and amount indicated in the Schedule of Fees table includes all work performed, including
28 additional hours incurred in connection with the Supplemental Submission. (*See* Doc. 51.)

1 motion work in this action was not as extensive as in *Garcia*, the amount of hours billed is
2 significantly less than the amount approved in *Garcia* and instead matches the amount ultimately
3 approved in *Bond*, which included discovery involving significantly fewer class members than in this
4 action. The Court thus finds no reason to reduce the number of hours set forth in counsel's lodestar
5 calculations.

6 **c. Reasonable Hourly Rates**

7 Class counsel has submitted documentation of the hourly rates billed in this matter. The rates
8 range from \$175 to \$185 for legal assistants, \$450 for associates, and \$550 to \$725 for principals
9 and partners. (Doc. 51, 6:18-14:25.) As recent cases have indicated, prevailing rates in the Eastern
10 District of California are in the \$400 range, with rates of up to \$650 to \$675 approved for partners
11 and senior associates with significant years of experience. *See Garcia*, 2012 WL 5364575, at *9,
12 *Bond*, 2011 WL 2648879, at *11-13. Although Plaintiffs contend that the requested rates are "within
13 the range" and "consistent" with those approved in *Bond*, they concede that some of the rates are
14 "greater than the hourly rate approved in *Bond*." (Doc. 51, 14-22.)

15 In *Bond*, the court noted that "[b]ecause the lodestar is being used here as a cross-check, the
16 court may use a 'rough calculation of the lodestar.'" *Bond*, 2011 WL 2648879, at *12 (citing
17 *Fernandez*, 2008 WL 8150856, at *9. The court in *Bond* determined that it was "appropriate to
18 roughly haircut the lodestar" by 10 percent to bring the requested hourly rates to within those
19 prevalent within the Eastern District. Thus, for example, a requested hourly rate of \$750 for a
20 partner with more than 20 years of experience was adjusted to \$675 per hour. A requested hourly
21 rate of \$290 for an associate with two years of experience was adjusted to \$261 per hour.
22 Additionally, the court found that the appropriate rate for legal assistants was \$100 per hour.
23 Similarly, in *Garcia*, while the court did not reduce the requested rates, the maximum rate approved
24 was \$650 per hour, and many of the rates were billed at \$125 to \$400 per hour. *See Garcia*, 2012
25 WL 5364575, at *9.

26 Here, the hourly rates requested by Class Counsel are similar to those requested in *Bond* and
27 are subject to a 10 percent "haircut" to account for the rates in the relevant community. Further,
28

1 based upon the rate approved in *Bond*, the rate for legal assistants will be reduced to \$100 per hour.

2 This adjustment is as follows:

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Adjusted Schedule of Fees					
Attorney	Title	Hourly Rate	Adjusted Hourly Rate	Hours Worked	Total Fees
Jennifer Crewz	Legal Assistant	\$175	\$100	6.7	\$670.00
Elena M. DiBattista	Legal Assistant	\$185	\$100	3.4	\$340.00
Philip A. Downey	Principal/Owner	\$550	\$495	501.9	\$248,440.50
Betsy Ferling-Hitriz	Legal Assistant	\$185	\$100	15.1	\$1,510.00
Brandon Lauria	Associate	\$450	\$405	21.9	\$8,869.50
Karen Leser-Grenon	Associate	\$450	\$405	94.1	\$38,110.50
Rose F. Luzon	Associate	\$450	\$405	195.1	\$79,015.50
James E. Miller	Principal/Partner	\$725	\$652.50	93.1	\$60,747.75
Sue Moss	Legal Assistant	\$185	\$100	4.9	\$490.00
Chiharu Sekino	Legal Assistant/ Law Clerk	\$185	\$166.50	13.2	\$2,197.80
James C. Shah	Principal/Partner	\$700	\$630	3.6	\$2,268.00
Debbie Tutler	Legal Assistant	\$175	\$100	21.8	\$2,180.00
Itza Vilaboy	Legal Assistant	\$175	\$100	45.8	\$4,580
Lesley Weaver	Director	\$600	\$540	141.7	\$76,518.00
Eric L. Young	Principal/Partner	\$625	\$562.50	171.3	\$96,356.25
Nathan Zipperian	Partner	\$550	\$495	12.1	\$5,989.50
Total				1,345.7	\$628,283.30

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22 The adjusted attorney hourly rates range from \$405 to 652.50 per hour and account for the
23 respective attorney's experience and position within Class Counsel firms. This comports generally
24 with the range of rates awarded in *Bond* and *Garcia*. The lodestar, after adjustments, is \$628,283.30.

25 **d. Lodestar Multiplier**

26 The amount of \$825,000 requested by Class Counsel is greater than the amount of
27 \$628,283.30. However, adjustments to increase or decrease the lodestar amount are sometimes
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1 appropriate and justify the use of a "lodestar multiplier." *Clark v. City of Los Angeles*, 803 F.2d 987,
2 991 (9th Cir. 1986); *see also Fischel v. Equitable Life Assur. Society of U.S.*, 307 F.3d 997, 1008
3 (9th Cir. 2002). "It is an established practice in the private legal market to reward attorneys for
4 taking the risk of non-payment by paying them a premium over their normal hourly rates for winning
5 contingency cases." *Fischel*, 307 F.3d at 1008 (citing *In re Washington Pub. Power Supply Sys. Sec.*
6 *Litig.*, 19 F.3d 1291, 1299 (9th Cir. 1994)). Generally, a district court has discretion to apply a
7 multiplier to the attorney's fees calculation to compensate for the risk of nonpayment. *Fischel*, 307
8 F.3d at 1008; *see also In re Coordinated Pretrial Proceedings in Petroleum Products Antitrust Litig.*
9 *v. Exxon Corp.*, 109 F.3d 602, 609 (9th Cir.1997); *Bond*, 2011 WL 2648879, at *13.

10 The "lodestar multiplier" is calculated by dividing the percentage fee award by the lodestar
11 calculation. *Fischel*, 307 F.3d at 1008. Here, a multiplier of 1.31 is calculated by dividing
12 \$825,000.00 by \$628,283.30. To determine whether the lodestar multiplier is reasonable the
13 following factors may be considered: (1) the amount involved and the results obtained, (2) the
14 novelty and difficulty of the questions involved, (3) the skill requisite to perform the legal service
15 properly, (4) the preclusion of other employment by the attorney due to acceptance of the case,
16 (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the
17 client or the circumstances, (8) the amount involved and the results obtained, (9) the experience,
18 reputation, and ability of the attorneys, (10) the undesirability of the case, (11) the nature and length
19 of the professional relationship with the client, and (12) awards in similar cases. *Id.* at 1007, n. 7
20 (citing *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir.1975)); *see also Bond*, 2011 WL
21 2648879, at *13.⁷

22 Here, Class Counsel undertook considerable financial risks in this litigation by accepting this
23 case on a contingency basis. There was no guarantee they would recoup their fees or the substantial
24 costs advanced. The contingent nature of the representation has also resulted in Class Counsel
25 litigating this matter approximately two years at this point without any compensation. As a
26 consequence, Class Counsel was unable to take on cases they would have otherwise taken.

27
28 ⁷ Only the *Kerr* factors that are not already subsumed within the lodestar are considered. *See Van Gerwen v.*
Guarantee Mut. Life Co., 214 F.3d 1041, 1046-47 (9th Cir. 2000).

1 Additionally, the percentage award requested in this case is commensurate with the
2 percentage-of-the-benefit awards made in other wage and hour actions in this District, many of
3 which included a lodestar multiplier. *See, e.g., Garcia*, 2012 WL 5364575, at *8-*10 (33%); *Bond*,
4 2011 WL 2648879, at *9-*14 (30%); *see also Schiller v. David's Bridal, Inc.*, No.
5 1:10-CV-00616-AWI-SKO, 2012 WL 2117001, at *16-*23 (E.D. Cal. June 11, 2012) (33.3%);
6 *Benitez*, 1:08–CV–1122 LJO GSA (E.D. Cal. Dec. 15, 2009) (33.3%); *Chavez*, 1:08–CV–00122
7 LJO–GSA (E.D.Cal. Dec. 15, 2009) (33.3%).

8 Based on the overall success, the absence of opposition, and Class Counsel's
9 well-documented hours worked in this action, Plaintiffs' request for a multiplier of 1.31 of its
10 lodestar is reasonable. *See, e.g. Vizcaino.*, 290 F.3d 1043, 1051 (finding no abuse of discretion in
11 awarding a multiplier of 3.65); *see also Garcia*, 2012 WL 5364575, at *9 (approving a multiplier
12 of 1.28); *Bond*, 2011 WL 2648879, at *13-*14 (approving a multiplier of 1.75). According, the
13 Court approves the request for attorneys' fees in the total amount of \$825,000.

14 **C. Plaintiffs' Request for Costs is Granted**

15 The Court further finds that Plaintiffs' request for \$30,000 in costs is reasonable. The
16 declarations of Class Counsel detail the costs incurred (*See Docs. 51-3, 51-4, 51-5*), which include
17 travel costs, mediation fees, expert fees, copy and scanning costs, filing fees, and electronic research
18 fees. These types of fees are routinely reimbursed. *See, e.g., Vasquez*, 266 F.R.D. at 493. Here, the
19 actual costs incurred are greater than the agreed-upon amount of \$30,000. As such, Plaintiffs'
20 request of costs in the amount of \$30,000 is reasonable and is approved.

21 **D. Plaintiffs' Motion for Enhancement Awards to the Class Representatives is Granted**

22 Pursuant to the Settlement Agreement, Plaintiffs seek an enhancement in the amount of
23 \$7,000 to the named Plaintiffs Franco and Castro. This payment is intended to recognize the time
24 and efforts that the named Plaintiffs spent on behalf of the Class Members.

25 "Courts routinely approve incentive awards to compensate named plaintiffs for the services
26 they provide and the risks they incurred during the course of the class action litigation." *Ingram v.*
27 *The Coca-Cola Company*, 200 F.R.D. 685, 694 (N.D. Ga. 2001) (internal quotations and citations
28 omitted). In *Ingram*, the Court approved service awards of \$300,000 to each named plaintiff in

1 recognition of the services they provided to the class by responding to discovery, participating in the
2 mediation process, and taking the risk of stepping forward on behalf of the class. *Id.*; see also *Van*
3 *Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995) (approving \$50,000
4 participation award to plaintiffs); *Glass v. UBS Financial Services, Inc.*, No. C-06-4068-MMC, 2007
5 WL 221862, at *17 (N.D. Cal. Jan. 26, 2007) (approving \$25,000 enhancement to each named
6 plaintiff).

7 Here, the named Plaintiffs assisted Class Counsel by (1) bringing this case to Class Counsel's
8 attention; (2) searching for key documents; (3) meeting regularly with Class Counsel to provide
9 information and answer questions about their work experience and documents; (4) assisting with the
10 preparation of the original and amended complaints; (5) preparing for and attending a lengthy
11 deposition; (6) reviewing the settlement terms; and (7) reviewing and executing a general release of
12 claims. (Doc. 51, 3:1-6; see also Docs. 51-1 (Franco Decl.), 51-2 (Castro Decl.)) Further, Plaintiff
13 Franco organized meetings between Class Counsel and current and former employees of Defendant,
14 resulting in multiple declarations that assisted Class Counsel in litigating and resolving the case.
15 (Doc. 51, 3:7-9, Doc. 51-1 (Franco Decl.), ¶ 9.) Plaintiffs also bore significant personal risk, as
16 Defendant is located in a small community and Plaintiffs are recent migrants with limited education
17 and job prospects, who believed that serving as named Plaintiffs may cause future employers to be
18 reluctant to hire them. (Doc. 51-1 (Franco Decl.), ¶ 13; Doc. 51-2 (Castro Decl.), ¶ 13.) The Court
19 therefore finds that incentive awards requested in the amount of \$7,000 are reasonable.

20 V. CONCLUSION AND ORDER

21 Based on consideration of the memorandums, declarations, and exhibits filed in support of
22 the present motions, IT IS HEREBY ORDERED that:

- 23 1. The Motion for Final Approval of the Class Action Settlement is GRANTED, subject
24 to the following findings and orders:
 - 25 a. Unless defined herein, all defined terms in this Order shall have the
26 respective meanings as the same terms in the Stipulation of Settlement;
 - 27 b. Pursuant to Federal Rule of Civil Procedure 23(b)(3) and the Fair Labor
28 Standards Act, and for settlement purposes only, the Court certifies the

1 proposed Settlement Class, consisting of all persons currently or formerly
2 employed as non-exempt production line employees at the Ruiz Foods
3 processing facility in Dinuba, California, between December 15, 2006, and
4 February 10, 2012, the date of the Court's Order granting preliminary
5 approval of the Settlement;

6 c. For settlement purposes only, Settlement Class Counsel are:

7 Eric L. Young, Esq.
8 Egan Young, Attorneys at Law
9 526 Township Line Road, Suite 100
10 Blue Bell, PA 19422

11 Rose F. Luzon, Esq.
12 Shepherd, Finkelman, Miller & Shah, LLP
13 401 West A Street, Suite 2350
14 San Diego, CA 92101

15 Philip A. Downey, Esq.
16 The Downey Law Firm, LLC
17 P.O. Box 1021
18 Unionville, PA 19375;

19 d. Heffler, Radetich & Saitta, LLP, is approved as the Settlement Administrator;

20 e. The Court has conducted a preliminary and final evaluation of the Settlement
21 as set forth in the Parties' Stipulation of Settlement to assess its fairness,
22 adequacy, and reasonableness. Based on these evaluations, the Court finds
23 that the Settlement, negotiated at arms' length by the Parties, is fair,
24 reasonable, and adequate;

25 f. On March 28, 2012, in accordance with the Court's Order granting
26 preliminary approval of the Settlement, the Court-approved Class Notice, in
27 both the English and Spanish language, was provided via U.S. first-class mail
28 to 2,055 Class Members. Class Notices returned as undeliverable with
forwarding addresses were promptly re-mailed to Class Members, while
Class Notices that were returned as undeliverable without a forwarding
address were further researched and address traces were performed. For
updated addresses obtained by way of the address traces, Class Notices were

1 promptly mailed to the new addresses. Consistent with the Stipulation of
2 Settlement, no further processing was performed for those Class Notices that
3 were returned as undeliverable. The Court finds that the plan for giving
4 notice, in form, method, and content, as well as the execution of giving such
5 notice by the Parties and Settlement Administrator, has fully complied with
6 the requirements of Rule 23, due process, and this Court's Order granting
7 preliminary approval. In response to the Class Notice, only two Class
8 Members excluded themselves from the Settlement, no Class Members
9 objected to the Settlement terms, and no Class Members disputed the number
10 of weeks worked or the approximate Settlement Award noted in the Class
11 Notice;

12 g. Based upon the Court's preliminary and final evaluations, the Court hereby
13 GRANTS final approval of the Settlement;

14 h. Settlement Award checks will be mailed to Class Members within 45 days
15 after the Settlement becomes final and effective under the Stipulation of
16 Settlement, or in the event an appeal is filed, on the day after the appeal is
17 dismissed or withdrawn, or the appeal is decided upholding propriety of the
18 Settlement (unless Defendant requests and Class Counsel agrees to additional
19 time, which agreement will not be unreasonably withheld). The two
20 individuals who opted out of the Settlement, identified as Nancy O. Zapata
21 and Guadalupe R. Carbajal, are hereby excluded from the Class and shall not
22 be bound by the terms of this Settlement;

23 I. All Settlement Award checks issued to Class Members shall contain, on the
24 back of the check, the following language, which shall be the opt-in consent
25 required by the FLSA: "By endorsing this check, I consent to join the Class
26 in *Franco, et. al. v. Ruiz Food Products, Inc.*, elect to participate in the
27 Settlement, and agree to release all of my claims that are covered by the
28 Settlement." Class Members must only cash one Settlement Award check to

1 opt-in to the Class. Any checks that are not cashed will be paid by Defendant
2 to Ruiz-4-Kids and the Chicana Latina Foundation. Declarations from the
3 Settlement Administrator of proof of payments, and a list of all persons who
4 have cashed a Settlement Award check, will be filed with the Court
5 120 calendar days after Settlement Award checks are issued. Such
6 declarations shall be provided to Class Counsel and Defendant's Counsel;

7 j. As provided in the "RELEASED CLAIMS" section of the Stipulation of
8 Settlement, each member of the Settlement Class, except for the two
9 individuals who opted out of the Settlement, fully releases and discharges
10 Defendant as set forth *infra* in Section III(C) and in the Settlement Agreement
11 at Doc. 29-1. Each such Settlement Class member shall not be entitled to
12 pursue, accept or recover damages for any Released Claims against the
13 Released Parties arising between December 15, 2006, and the date of this
14 Order. Notwithstanding this Release of Claims, waivers of claims expressly
15 under the FLSA shall only be binding on Settlement Class members who
16 opted-in as provided above;

17 k. The Court approves the selection of Ruiz-4-Kids and the Chicana Latina
18 Foundation as the *cy pres* beneficiaries. The Claims Administrator shall
19 donate to these beneficiaries according to the conditions set out in the
20 Settlement Agreement;

21 l. The Court approves an award of \$10,000 pursuant to the California Labor
22 Code sections 2698, et seq., the California Labor Code Private Attorneys
23 General Act of 2004 ("PAGA"), with payment of \$7,500 to the California
24 Labor and Workforce Development Agency ("LWDA") for the release of
25 Class Members' PAGA claims, and the balance of \$2,500 to be applied to the
26 benefit of the Class;

27 m. The Court awards Class Representative Enhancements of \$7,000 each to
28 Patricia Franco and Lilia Castro. The Court finds that this amount is fair and

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reasonable in light of Plaintiffs' contributions to the litigation, for the notoriety and risk of serving as representatives for the class, and for providing Defendant a general release of claims;

n. The Court hereby awards attorneys' fees in the amount \$825,000 and costs in the amount of \$30,000 to Class Counsel;

o. The Court approves claims administration expenses in the amount of \$30,000 payable to the Settlement Administrator, Heffler, Radetich & Saitta, LLP;

2. The Court retains jurisdiction over the parties to enforce the terms of the Order and Judgment, and shall have continuing jurisdiction over the construction, interpretation, implementation, and enforcement of the Settlement Agreement in accordance with its terms;

3. As indicated above, within one hundred and twenty (120) days of the date of the order, the Settlement Administrator shall provide declarations to the Court, Class Counsel, and Defendant's Counsel of proof of payments and a list of all persons who have cashed a Settlement Award check; and

4. After the declarations from the Settlement Administrator have been filed and within one hundred and eighty (180) days of the date of this Order, the parties shall file a proposed Final Judgment and Dismissal with Prejudice for entry by the Court.

IT IS SO ORDERED.

Dated: November 27, 2012

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE