UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

LOUIS NEWELL, an individual, for himself and those similarly situated; MIGUEL CALDERON, an individual for himself and those similarly situated, Plaintiffs, v. ENSIGN UNITED STATES DRILLING (CALIFORNIA) INC., a California corporation, Defendant.	No. 1:19-cv-01314-NONE-JLT ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT (Doc. No. 30.)

Before the court for consideration is plaintiffs' unopposed motion for preliminary approval of a class action settlement. (Doc. Nos. 30, 32.) Following the filing of the pending motion, the court noted several concerns regarding the proposed settlement and directed the parties to file supplemental briefing. (Doc. No. 33.) Thereafter, the parties filed a joint supplemental brief on April 30, 2021.[1] (Doc. No. 34.) Pursuant to Local Rule 230(g) and

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[1] On July 23, 2021, the court also ordered the parties to file supplemental briefing addressing the impact of the recent Ninth Circuit decisions in *Mauia v. Petrochem Insulation, Inc.*, 5 F.4th 1068 (9th Cir. 2021) and *Newton v. Parker Drilling Mgmt. Servs., Ltd.*, 860 F. App'x 536 (9th Cir. 2021) ("*Parker Drilling*"), on the pending motion to approve the parties' proposed class action settlement. (Doc. No. 35.) In response, the parties filed a joint brief on August 6, 2021. (Doc. No. 36.)

General Order No. 617, the court has taken this matter under submission on the papers without holding a hearing. For the reasons set forth below, plaintiffs' motion will be granted.[2]

BACKGROUND

A. Factual Background

Defendant conducts drilling operations on offshore oil and gas platforms off the California coast. (Doc. No. 30 at 10.) Plaintiffs Newell and Calderon worked for defendant on federal offshore platforms, performing non-exempt rig work. (*Id.*) Plaintiffs' typical work schedule has consisted of a seven day "hitch" (the colloquial term for the work period spent offshore) which was generally seven consecutive days spent on the platform, followed by seven days off work. (*Id.*) During a hitch, plaintiffs generally were scheduled to work a rotating 12-hour schedule. (*Id.*) Plaintiffs allege that they and the putative class were scheduled for 12 hours "on duty," followed by 12 hours of "controlled standby" in which plaintiffs and the putative class members were allegedly required to be "on call" and available to respond to any issues that arise on the platform. (*Id.*) During a hitch, plaintiffs further allege that they and the putative class were not able to leave the platform. (*Id.*) Plaintiffs also allege that they and the putative class members were required to listen for and respond to calls and alarms during meal periods. (*Id.*) If work calls or an alarm sounded, plaintiffs and putative class members were allegedly required to stop whatever they were doing and respond to the work, and they were not allowed to leave the platform for any meals. (*Id.* at 10–11.)

Plaintiffs next allege that during the relevant period, when class members resided aboard the platforms affixed to the Outer Continental Shelf ("OCS") during their hitches, they were provided lodging and common areas for personal use and meals. (*Id.* at 11.) The offshore lodging and meals were provided at no cost to class members, but the value of the lodging and

[2] The undersigned apologizes for the excessive delay in the issuance of this order. This court's overwhelming caseload has been well publicized and the long-standing lack of judicial resources in this district long-ago reached crisis proportion. That situation, which has continued unabated for over twenty-two months now, has left the undersigned presiding over 1,300 civil cases and criminal matters involving 735 defendants at last count. Unfortunately, that situation sometimes results in the court not being able to issue orders in submitted civil matters within an acceptable period of time. This situation is frustrating to the court, which fully realizes how incredibly frustrating it is to the parties and their counsel.

meals was not included in the regular rate calculation for purposes of payment of overtime or double time wages to the class members, which means plaintiffs and class members were not correctly paid. (*Id.*)

Plaintiffs allege that defendant had the following common policies and practices affecting the putative class: (1) requiring employees to remain on the oil platforms for the duration of their hitch; (2) only paying employees for 12 or more hours of active work time each day; (3) not paying employees for approximately 12 hours of "controlled standby" time each day, whether at overtime, doubletime, or minimum wage rates; (4) not having employees clock out for or receive duty-free meal periods; (5) requiring employees to be ready to respond to alarms and calls during "on duty" and "controlled standby" time; and (6) failing to add[3] meal and lodging benefits into the regular rate of pay calculations. (*Id.*)

B. Procedural History

On June 22, 2015, plaintiffs initiated this action in the Kern County Superior Court. (Doc. No. 1-1.) Following the expiration of the required statutory notice period set forth in California Labor Code § 2698 *et seq.*, plaintiffs filed a first amended complaint on August 3, 2015, asserting claims for minimum wage violations, unfair competition, failure to timely pay final wages, failure to provide lawful meal periods, failure to pay overtime and double time premium wages, and pay stub violations, as well as an additional cause of action brought pursuant to the California Private Attorneys General Act ("PAGA"). (Doc. No. 1-2.) Each claim arises out of the mandated requirement that employees remain on the offshore platforms but went unpaid for doing so. (*Id.*) The first of three private mediation sessions occurred on January 27, 2016, in Bakersfield, California. (Doc. No. 30-1 ¶ 6.)

On October 25, 2016, the parties stipulated to certification of the following class for purposes of bringing cross-motions for summary adjudication:

[3] The motion states that one of defendant's common practices is "*including* meal and lodging benefits into the regular rate of pay calculations." (Doc. No. 30 at 11 (emphasis added).) In light of the entirety of the record, however, the court believes this to be a typographical error. (*Compare* Doc. No. 34 at 19 (disputing "whether [defendant] violated the FLSA by *excluding* the value of lodging and meals from the calculation of overtime wages.") (emphasis added).)

> Defendant's non-exempt employees that worked and stayed on oil platforms located in federal waters off the California coast for periods of 24 hours or more, to the extent such employees' state wage and hour claims arise from or relate to this fact ("MSA Class").

(Doc. No. 19 at 7.) The parties agreed that summary adjudication of defendant's preemption affirmative defense was significant in this case, and thus the state court ordered class certification for this limited purpose and a class notice was subsequently mailed. (*Id.*) On April 28, 2017, defendant moved for summary adjudication of its affirmative defense of "Preemption," asserting that California law was/is inapplicable to the subject offshore oil rigs. (*Id.*)

On August 15, 2017, the parties stipulated to modify the motion for summary adjudication hearing schedule in response to a pending appeal before the Ninth Circuit Court of Appeals which addressed identical issues raised in defendant's motion for summary adjudication. *See Newton v. Parker Drilling Mgmt. Servs., Inc.*, No. 2:15-cv-02517 (C.D. Cal. Aug. 10, 2015). The Ninth Circuit rendered its opinion in *Newton* on February 5, 2018, holding that California labor law was and is "applicable" to the work performed by the MSA Class and "not inconsistent" with federal law. *See Newton v. Parker Drilling Mgmt. Servs., Ltd.*, 881 F.3d 1078 (9th Cir. 2018), *vacated and remanded by Parker Drilling Mgmt. Servs., Ltd. v. Newton*, __U.S.__, 139 S. Ct. 1881 (2019) ("*Newton*"). The Ninth Circuit thus held that California state wage and hour laws are adopted as surrogate federal law on the offshore platforms. *Id.* at 1081–82.

Following supplemental briefing on the *Newton* decision, defendant moved to stay the action, but that motion was denied. (Doc. No. 19 at 7.) Prior to the parties' second mediation, the court subsequently denied defendant's motion for summary adjudication on June 15, 2018, holding that California law is not preempted by federal law for offshore platforms on California's OCS, and defendant's oral request for a stay was denied. (*Id.* at 7–8.) Defendant filed writs with both the state appellate and supreme court, both of which were denied. (*Id.* at 8.) Thereafter, a second private mediation session was held on November 19, 2018, in Bakersfield, California. (Doc. No. 30-1 ¶ 6.)

On February 1, 2019, defendant filed a renewed motion to stay all further proceedings pending a final decision by the United States Supreme Court in *Parker Drilling Management*

Services, Ltd. v. Newton, including plaintiff's then-pending motion for class certification. (*Id.*) The Supreme Court issued its opinion on June 10, 2019, reversing the Ninth Circuit and holding that where federal law addresses the relevant issue, state law is not adopted as surrogate federal law on the OCS.[4] *Newton*, 139 S. Ct. at 1881.

In light of the Supreme Court's decision, the parties stipulated that plaintiffs would amend the complaint in this action to assert an overtime claim under the Fair Labor Standards Act ("FLSA") and a rest break claim under California law, among other clarifications of the pleadings, and plaintiffs filed their second amended complaint on August 22, 2019. (Doc. Nos. 1-6, 1-7.) Thereafter, on September 19, 2019, defendant removed the action to this federal court. (Doc. No. 1.) The parties again stipulated to plaintiffs' filing of a third amended complaint, which was filed on January 29, 2020. (Doc. Nos. 13–15.)

On February 28, 2020, plaintiffs filed a motion for conditional certification and facilitated notice under the FLSA, which defendant opposed. (Doc. Nos. 19, 21.) The assigned magistrate judge issued findings and recommendations on April 29, 2020, recommending that plaintiffs' motion be granted. (Doc. No. 24.) Defendant filed objections to the findings and recommendations, and plaintiffs filed a response. (Doc. Nos. 25, 26.)

The parties participated in their final private mediation session on September 18, 2020, which was conducted via Zoom with California Justice Stephen J. Kane (Ret.) presiding over the negotiations. (Doc. No. 30 at 9.) Following the conclusion of that mediation, the parties agreed to settlement terms, and on September 29, 2020, the parties notified the court of their settlement. (Doc. No. 28.) The assigned magistrate judge ordered the parties to file a motion for preliminary approval of the class and representative action by December 18, 2020, and vacated all pending dates, conferences, and hearings. (Doc. No. 29.)

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[4] In light of the Supreme Court's decision, the Ninth Circuit has since held that "[f]ederal law therefore addresses meal and rest periods, and California law does not provide the rule of decision for meal- and rest-time claims arising on the OCS." *Mauia*, 5 F.4th at 1075. The Ninth Circuit further found that federal law addresses pay-stub and waiting-time-penalty claims. *Newton*, 860 Fed. Appx. at 538 (also concluding the district court properly dismissed the unfair competition and PAGA claims because they were "predicated on [defendant's] alleged violations of state wage-and-hour laws, including those for unpaid meal and rest period premiums.").

C. Settlement

On December 14, 2020, plaintiffs filed the present unopposed motion for preliminary approval of class action settlement. (Doc. No. 30; *see generally* Ex. 3, Hefelfinger Decl., Doc. No. 30-1, at 56–104.) Pursuant to the settlement agreement, plaintiffs seek to certify the following settlement class ("Rule 23 class") of an estimated 307 individuals ("class members"):

> All non-exempt employees of [defendant] who, at any time between June 22, 2011 and the present (the "Claims Period"), worked and stayed on oil platforms off of the California coast for periods of 24 consecutive hours or more any time during the Claims Period.

(Doc. No. 30 at 61.) Plaintiffs also seek to conditionally certify the following FLSA collective ("FLSA collective"):

> All current and former hourly employees of [defendant] who, at any time within four years from the date of filing of this lawsuit, worked on oil platforms off of the California coast and who stayed on such platforms for periods of 24 hours or more.

(Doc. No. 34 at 22–23 (citing Doc. No. 15 at 17).) All class members "are all eligible to participate in the FLSA settlement as well as Rule 23 class action settlement." (Doc. No. 34 at 23.) Class members can release their FLSA claims by opting into the FLSA payment by submitting a timely and valid FLSA claim form. (Doc. No. 30 at 59–60, 66, 101–03, 102.)

Under the proposed settlement agreement, defendant would pay a sum of $2,400,000. (*Id.* at 61.) The agreement provides for the following allocation of that payment: (1) $100,000 to the resolution of PAGA claims, with $75,000 of that amount to be paid to the California Labor and Workforce Development Agency ("LWDA"); (2) an estimated $15,000 to the settlement administrator; (3) $35,000 to plaintiff Newell and $25,000 to plaintiff Calderon as enhancement awards; (4) 35 percent, or $840,000, to be paid to class counsel in attorneys' fees; and (5) estimated litigation costs of up to $15,000. (*Id.* at 60–61, 68, 79, 80.) After these deductions, each member of the settlement class will be entitled to a pro rata amount of the net settlement fund "based on his or her hours during the Claim Period (which shall be from the data supplied by Defendant to the Claims Administrator)." (*Id.* at 75.) Fourteen percent of the remaining amount, or $200,000, has been allocated toward the resolution of the FLSA claims. (*Id.* at 60.)

Plaintiffs seek an order from this court: (1) preliminarily approving the joint stipulation of settlement between plaintiffs and defendant; (2) conditionally certifying the settlement class and appointing the named plaintiffs to represent the settlement class; (3) conditionally certifying the FLSA collective action; (4) approving the proposed form and content of the notice of class action settlement and related notice packet, including the opt-in procedures for the FLSA collective action; (5) approving the implementation schedule; (6) approving CPT Group, Inc., as the claims administrator; and (7) scheduling a final fairness hearing. (Doc. No. 30 at 2.)

LEGAL STANDARDS

A. Rule 23 Settlements

Federal Rule of Civil Procedure 23(e) provides that "[t]he claims, issues, or defenses of a certified class—or a class proposed to be certified for purposes of settlement—may be settled, voluntarily dismissed, or compromised only with the court's approval." "Courts have long recognized that settlement class actions present unique due process concerns for absent class members." *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011) (internal quotation marks and citations omitted). To protect the rights of absent class members, Rule 23(e) requires that the court approve all class action settlements "only after a hearing and on finding that it is fair, reasonable, and adequate . . ." Fed. R. Civ. P. 23(e)(2); *see also Bluetooth*, 654 F.3d at 946. But when parties seek approval of a settlement agreement negotiated before formal class certification, "there is an even greater potential for a breach of fiduciary duty owed the class during settlement." *Bluetooth*, 654 F.3d at 946. Thus, the court must review such agreements with "a more probing inquiry" for evidence of collusion or other conflicts of interest than what is normally required under the Federal Rules. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998), *overruled on other grounds by Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011); *see also Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012).

Review of a proposed class action settlement ordinarily proceeds in three stages. *See* MANUAL FOR COMPLEX LITIGATION (4th) § 21.632. First, the court conducts a preliminary fairness evaluation and, if applicable, considers class certification. *Id.* (noting that if the parties move for both class certification and preliminary approval, the certification hearing and

preliminary fairness evaluation can usually be combined). Second, if the court makes a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms, the parties are directed to prepare the notice of certification and proposed settlement to the class members. *Id.* Third, the court holds a final fairness hearing to determine whether to approve the settlement. *Id.*; *see also Narouz v. Charter Commc'ns, LLC*, 591 F.3d 1261, 1267 (9th Cir. 2010).

"In December 2018, Congress and the Supreme Court amended Rule 23(e) to set forth specific factors to consider in determining whether a settlement is 'fair, reasonable, and adequate.'" *Briseño v. Henderson*, 998 F.3d 1014, 1023 (9th Cir. 2021); *see* Fed. R. Civ. P. 23(e)(2) (effective Dec. 1, 2018). In considering whether "the relief provided for the class is adequate," the court must take into account:

> (i) the costs, risks, and delay of trial and appeal;
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> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
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> (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
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> (iv) any agreement required to be identified under Rule 23(e)(3)[.]

Fed. R. Civ. P. 23(e)(2)(C); *see Briseño*, 998 F.3d at 1023–24.

Federal courts generally find preliminary approval of the settlement and notice to the proposed class appropriate if "the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval." *Lounibos v. Keypoint Gov't Sols. Inc.*, No. 12-cv-00636-JST, 2014 WL 558675, at *5 (N.D. Cal. Feb. 10, 2014) (quoting *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007)); *see also* NEWBERG ON CLASS ACTIONS § 13:13 (5th ed. 2011); *Briseño*, 998 F.3d at 1027–28 ("The district court thus should give a hard look at the settlement agreement to ensure that the parties have not colluded at class members' expense."). "The court need not 'reach any ultimate conclusions on the contested issues of fact and law which underlie

the merits of the dispute.'" *Chem. Bank v. City of Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992) (quoting *Officers for Just. v. Civil Serv. Comm'n of City & Cnty. of S.F.*, 688 F.2d 615, 625 (9th Cir. 1982)). Rather, the court should weigh, among other factors, the strength of a plaintiff's case; the risk, expense, complexity, and likely duration of further litigation; the extent of discovery completed; and the value of the settlement offer. *Id.*

B. PAGA Settlements

Under PAGA, an "aggrieved employee"[5] may bring an action for civil penalties for California Labor Code violations on behalf of himself and other current or former employees. Cal. Lab. Code § 2699(a). A plaintiff suing under PAGA "does so as the proxy or agent of the state's labor law enforcement agencies." *Arias v. Superior Ct.*, 46 Cal. 4th 969, 986 (2009). Accordingly, a judgment in a PAGA action "binds all those, including nonparty aggrieved employees, who would be bound by a judgment in an action brought by the government." *Id.*; *see also Iskanian v. CLS Transp. L.A., LLC*, 59 Cal. 4th 348, 381 (2014) ("When a government agency is authorized to bring an action on behalf of an individual or in the public interest, and a private person lacks an independent legal right to bring the action, a person who is not a party but who is represented by the agency is bound by the judgment as though the person were a party.").

The PAGA statute imposes a number of limitations on litigants. First, because a PAGA action functions as a "substitute" for an action brought by the state government, a plaintiff suing under PAGA is limited to recovery of civil penalties only, rather than damages or unpaid wages available privately through direct or class action claims. *Iskanian*, 59 Cal. 4th at 381; *ZB, N.A. v. Superior Ct.*, 8 Cal. 5th 175 (2019). Second, to bring an action under PAGA, an aggrieved employee must first provide written notice to the LWDA as well as to the employer. Cal. Lab. Code § 2699.3(a)(1). Third, any civil penalties recovered must be divided 75 percent with the LWDA and 25 percent with the aggrieved employees. *Id.* § 2699(i). Finally, the proposed settlement of PAGA claims must be submitted to the LWDA and a trial court must "review and

[5] An "aggrieved employee" is defined as "any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed." Cal. Lab. Code § 2699(c).

approve" any settlement of such claims. *Id.* § 2699(l)(2). Although there is no binding authority setting forth the proper standard of review for PAGA settlements, in the class action context where PAGA claims often appear, courts must independently determine that a proposed settlement agreement is "fundamentally fair, adequate and reasonable" before granting approval. *See In re Heritage Bond Litig.*, 546 F.3d 667, 674–75 (9th Cir. 2008). The determination of fairness, reasonableness, and adequacy may involve a balancing of several factors including but not limited to the following: the strength of plaintiffs' claims; the risk, expense, complexity, and likely duration of further litigation; the amount offered in settlement; the extent of discovery completed, and the stage of the proceedings; and the experience and views of counsel. *Officers for Just.*, 688 F.2d at 625.

The LWDA has also provided some guidance regarding court approval of PAGA settlements. In a case where both class action and PAGA claims were covered by a proposed settlement, the LWDA stressed that

> when a PAGA claim is settled, the relief provided for under the PAGA [must] be genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public and, in the context of a class action, the court [must] evaluate whether the settlement meets the standards of being "fundamentally fair, reasonable, and adequate" with reference to the public policies underlying the PAGA.

California Labor and Workforce Development Agency's Comments on Proposed PAGA Settlement ("LWDA Letter"), *O'Connor v. Uber Techs., Inc.*, No. 3:13-cv-03826-EMC (N.D. Cal. July 29, 2016) (Doc. No. 736 at 2–3);[6] *O'Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d 1110, 1133 (N.D. Cal. 2016) (citing the LWDA Letter with approval).

Recognizing the distinct issues presented by class actions, this court is persuaded by the LWDA's reasoning in *O'Connor* and therefore adopts its proposed standard in evaluating the PAGA portion of the settlement now before the court. *See, e.g.*, *Tenorio v. Gallardo*, No. 1:1-cv-00283-DAD-JLT, 2019 WL 4747949, at *3 (E.D. Cal. Sept. 30, 2019); *Patel v. Nike Retail*

[6] In the LWDA Letter, the LWDA also stated that it "is not aware of any existing case law establishing a specific benchmark for PAGA settlements, either on their own terms or in relation to the recovery on other claims in the action."

Servs., Inc., No. 14-cv-04781-RS, 2019 WL 2029061, at *2 (N.D. Cal. May 8, 2019). Accordingly, the court will approve a settlement of PAGA claims upon a showing that the settlement terms (1) meet the statutory requirements set forth by PAGA, and (2) are fundamentally fair, reasonable, and adequate in view of PAGA's public policy goals.

C. FLSA Settlements

Under the FLSA, an employee may file a civil action against an employer that fails to adhere to the FLSA's guarantees. 29 U.S.C. § 216(b); *see also Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 69 (2013) ("The FLSA establishes federal minimum-wage, maximum-hour, and overtime guarantees that cannot be modified by contract."). Employees may bring collective actions under the FLSA, representing all "similarly situated" employees, but "each employee [must] opt-in to the suit by filing a consent to sue with the district court." *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1064 (9th Cir. 2000); *see also Jones v. Agilysys, Inc.*, No. C 12–03516 SBA, 2014 WL 108420, at *2 (N.D. Cal. Jan. 10, 2014). Because an employee cannot waive claims under the FLSA, the claims may not be settled without supervision of either the Secretary of Labor or a district court. *See Barrentine v. Ark.-Best Freight Sys., Inc.*, 450 U.S. 728, 740 (1981); *Beidleman v. City of Modesto*, No. 1:16-cv-01100-DAD-SKO, 2018 WL 1305713, at *1 (E.D. Cal. Mar. 13, 2018); *Yue Zhou v. Wang's Rest.*, No. 05-cv-0279 PVT, 2007 WL 2298046, at *1 n.1 (N.D. Cal. Aug. 8, 2007). The decision to certify a FLSA collective action is within the discretion of the district court. *See Edwards v. City of Long Beach*, 467 F. Supp. 2d 986, 989 (C.D. Cal. 2006).

The Ninth Circuit has not established criteria for district courts to determine whether an FLSA settlement should be approved. *Dunn v. Teachers Ins. & Annuity Ass'n of Am.*, No. 13-cv-05456-HSG, 2016 WL 153266, at *3 (N.D. Cal. Jan. 13, 2016). Rather, district courts in this circuit routinely apply the Eleventh Circuit standard, which looks to whether the settlement is a fair and reasonable resolution of a bona fide dispute. *Id.*; *see also Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1350, 1352–53 (11th Cir. 1982); *Milburn v. PetSmart, Inc.*, No. 1:18-cv-00535-DAD-SKO, 2019 WL 1746056, at *4 (E.D. Cal. Apr. 18, 2019); *Selk v. Pioneers Mem'l Healthcare Dist.*, 159 F. Supp. 3d 1164, 1172 (S.D. Cal. 2016); *Nen Thio v. Genji, LLC*, 14 F.

Supp. 3d 1324, 1333 (N.D. Cal. 2014). "A *bona fide* dispute exists when there are legitimate questions about the existence and extent of Defendant's FLSA liability." *Selk*, 159 F. Supp. 3d at 1172 (internal quotation marks and citations omitted). A court will not approve a settlement when there is certainty that the FLSA entitles plaintiffs to the compensation they seek, because doing so would shield employers from the full cost of complying with the statute. *Id.*

If a *bona fide* dispute exists, "[c]ourts often apply the Rule 23 factors in evaluating the fairness of an FLSA settlement, while recognizing that some do not apply because of the inherent differences between class actions and FLSA actions." *Khanna v. Inter-Con Sec. Sys., Inc.*, No. civ S-09-2214 KJM, 2013 WL 1193485, at *2 (E.D. Cal. Mar. 22, 2013) (internal quotation marks and citations omitted). The balancing factors include:

> the strength of the plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement.

Khanna v. Intercon Sec. Sys., Inc., No. 2:09-cv-2214 KJM EFB, 2014 WL 1379861, at *6 (E.D. Cal. Apr. 8, 2014), *order corrected*, 2015 WL 925707 (E.D. Cal. Mar. 3, 2015).

ANALYSIS

A. Preliminary Certification of Class

Certification requires satisfaction of the pre-requisites of Rule 23(a) and (b). *Pointer v. Bank of Am. Nat'l Ass'n*, No. 2:14-cv-00525-KJM-CKD, 2016 WL 696582, at *3 (E.D. Cal. Feb. 22, 2016) (citing *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 622 (1997)).

1. Rule 23(a) Requirements

"Rule 23(a) establishes four prerequisites for class action litigation: (i) numerosity, (ii) commonality, (iii) typicality, and (iv) adequacy of representation." *Staton v. Boeing Co.*, 327 F.3d 938, 953 (9th Cir. 2003). The court will address each requirement in the context of this case below.

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a. *Numerosity*

A proposed class must be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). The numerosity requirement demands "examination of the specific facts of each case and imposes no absolute limitations." *Gen. Tel. Co. of Nw., Inc. v. EEOC*, 446 U.S. 318, 330 (1980). Courts have found the requirement satisfied when the class comprises as few as thirty-nine members, or where joining all class members would serve only to impose financial burdens and clog the court's docket. *See Murillo v. Pac. Gas & Elec. Co.*, 266 F.R.D. 468, 474 (E.D. Cal. 2010) (citing *Jordan v. L.A. Cnty.*, 669 F.2d 1311, 1319 (9th Cir. 1982) (discussing Ninth Circuit thresholds for numerosity), *vacated on other grounds*, 459 U.S. 810 (1982)); *In re Itel Sec. Litig.*, 89 F.R.D. 104, 112 (N.D. Cal. 1981). Here, plaintiffs estimate that there are approximately 307 members in the settlement class. (Doc. No. 30 at 24.) This showing with respect to numerosity is adequate to meet the requirements of Rule 23(a)(1). *See Murillo*, 266 F.R.D. at 474.

b. *Commonality*

Rule 23(a) also requires "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). However, the raising of merely any common question does not suffice. *See Dukes*, 564 U.S. at 349 ("[a]ny competently crafted class complaint literally raises common 'questions.'") (quoting Richard A. Nagareda, *Class Certification in the Age of Aggregate Proof*, 84 N.Y.U. L. REV. 97, 131–32 (2009)). To satisfy the commonality requirement, the class representatives must demonstrate that common points of facts and law will drive or resolve the litigation. *Id.* at 350 ("What matters to class certification . . . is not the raising of common 'questions'—even in droves—but, rather the capacity of a classwide proceeding to generate common answers apt to drive the resolution of the litigation.") (internal citations omitted). "[C]ommonality is generally satisfied where . . . 'the lawsuit challenges a system-wide practice or policy that affects all of the putative class members.'" *Franco v. Ruiz Food Prods., Inc.*, No. cv 10-02354 SKO, 2012 WL 5941801, at *5 (E.D. Cal. Nov. 27, 2012) (quoting *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001), *abrogated on other grounds by Johnson v. Cal.*, 543 U.S. 499, 504–05 (2005)). The rule does not require all questions of law or fact to be common to every single class member. *See*

Hanlon, 150 F.3d at 1019 (noting that commonality can be found through "[t]he existence of shared legal issues with divergent factual predicates").

Here, plaintiffs argue that all settlement class members were subject to the same offshore wage and hour policies and practices of defendant. (Doc. No. 30 at 25.) Such common policies and practices include:

> (1) requiring employees to remain on the oil platforms for the duration of their hitch; (2) only paying employees for 12 or so hours of active work time each day; (3) not paying employees for approximately 12 hours of "controlled standby" time each day, whether at overtime, doubletime, or minimum wage rates; (4) not having employees clock out for or receive duty free meal periods; (5) requiring employees to be ready to respond to alarms and calls during "on duty" and "controlled standby" time; and (6) [failing to add] meal and lodging benefits into the regular rate of pay calculations.

(*Id.* at 11.) Because it appears that the same conduct which defendant allegedly engaged in "would form the basis of each of the plaintiff's claims," the court finds that commonality is satisfied. *Murillo*, 266 F.R.D. at 475 (citing *Acosta v. Equifax Info. Servs., L.L.C.*, 243 F.R.D. 377, 384 (C.D. Cal. 2007)) (internal quotation marks omitted).

c. *Typicality*

Rule 23(a)(3) also requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3); *Armstrong*, 275 F.3d at 868. Typicality is satisfied "when each class member's claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant's liability." *Armstrong*, 275 F.3d at 868; *see also Kayes v. Pac. Lumber Co.*, 51 F.3d 1449, 1463 (9th Cir. 1995) (claims are typical where named plaintiffs have the same claims as other members of the class and are not subject to unique defenses). While representative claims must be "reasonably co-extensive with those of absent class members," they "need not be substantially identical." *Hanlon*, 150 F.3d at 1020; *see also Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992).

Here, the named plaintiffs "worked for [defendant] on federal offshore platforms, performing non-exempt work." (Doc. No. 30 at 10.) Specifically, like the putative class, plaintiffs worked and stayed on the oil platforms off of the California coast for periods of 24

consecutive hours or more at any time during the claims period. (*Id.* at 25–26.) Plaintiffs state that they and the putative class members have worked under the same practices and policies and suffered the same injuries as a result of those common practices and policies. (*See id.* at 10–12.) The court concludes that plaintiffs' claims are reasonably co-extensive with those of the absent class members, and that typicality is therefore satisfied here.

d. *Adequacy of Representation*

The final Rule 23(a) prerequisite is satisfied if "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "The proper resolution of this issue requires that two questions be addressed: (a) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (b) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 462 (9th Cir. 2000); *see also Pierce v. Cnty. of Orange*, 526 F.3d 1190, 1202 (9th Cir. 2008).

Here, plaintiffs' counsel states that there are no conflicts of interest between the named plaintiffs and any other class member. (Doc. No. 30 at 26.) Counsel also states that the named plaintiffs do not have "interests that are antagonistic to other Class members and, in fact, they share a strong and identical interest in protecting Class Members and their interests." (*Id.*) The court finds no reason in the record before it to question these assertions. Additionally, plaintiffs seek appointment of their current counsel, Daniel J. Palay, Esq., and Brian D. Hefelfinger, Esq., as class counsel. (Ex. 3, Doc. No. 30-1 at 58.) Both attorneys "have substantial experience litigating and settling complex employment law actions involving the same issues raised by this case, including prior class action experience with these same legal issues." (Doc. No. 30 at 26; Hefelfinger Decl., Doc. No. 30-1 ¶¶ 27–30.) As such, the court finds that the named plaintiffs and plaintiffs' counsel satisfy the adequacy of representation requirement.

2. Rule 23(b)(3) Requirements

The parties here seek certification under Rule 23(b)(3), which requires: (i) that the questions of law or fact common to class members predominate over any questions affecting only individual members; and (ii) that a class action is superior to other available methods for fairly

and efficiently adjudicating the controversy. *See Amchem*, 521 U.S. at 615. The test of Rule 23(b)(3) is "far more demanding" than that of Rule 23(a). *Wolin v. Jaguar Land Rover N. Am.*, 617 F.3d 1168, 1172 (9th Cir. 2010) (quoting *Amchem*, 521 U.S. at 623–24). The court will examine each requirement in turn below.

a. *Predominance*

First, common questions must "predominate" over any individual questions. While this requirement is like the Rule 23(a)(2) commonality requirement, the standard is much higher at this stage of the analysis. *Dukes*, 564 U.S. at 359; *Amchem*, 521 U.S. at 624–25; *Hanlon*, 150 F.3d at 1022 (9th Cir. 1998). While Rule 23(a)(2) can be satisfied by even a single question, Rule 23(b)(3) requires convincing proof that the common questions "predominate." *Amchem*, 521 U.S. at 623–24; *Hanlon*, 150 F.3d at 1022. "When common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication, there is clear justification for handling the dispute on a representative rather than on an individual basis." *Hanlon*, 150 F.3d at 1022.

As discussed above, plaintiffs claim that the settlement class members "worked in similar offshore locations, were affected by common policies, and maintained common claims based upon the Defendant['s] uniform offshore worker policies which affected their wages and hours." (Doc. No. 30 at 27.) Specifically, "all of the putative class worked off-shore for the duration of each hitch, but were only paid for the 12–13 hours per day they were scheduled to work and were not paid meal and rest period premiums for every day spent off-shore, even though they were not able to return to shore during meal and rest periods." (Doc. No. 34 at 10.) Plaintiffs also contend the predominant legal issue is the same for all class members, i.e., whether federal or state law should apply to work performed on the OCS. (*Id.* at 10.) Class actions in which a defendant's uniform policies are challenged generally satisfy the predominance requirement of Rule 23(b)(3). *See Palacios v. Penny Newman Grain, Inc.*, No. 1:14-cv-01804-KJM, 2015 WL 4078135, at *5–6 (E.D. Cal. July 6, 2015); *Clesceri v. Beach City Investigations & Protective Servs., Inc.*, No. cv-10-3873-JST RZX, 2011 WL 320998, at *7 (C.D. Cal. Jan. 27, 2011). The court therefore concludes that the predominance requirement has been met in this case.

b. *Superiority*

Rule 23(b)(3) also requires a court to find "a class action is superior to other available methods for the fair adjudication of the controversy." Fed. R. Civ. P. 23(b)(3). In resolving the Rule 23(b)(3) superiority inquiry, "the court should consider class members' interests in pursuing separate actions individually, any litigation already in progress involving the same controversy, the desirability of concentrating in one forum, and potential difficulties in managing the class action—although the last two considerations are not relevant in the settlement context." *Palacios*, 2015 WL 4078135, at *6 (citing *Schiller v. David's Bridal Inc.*, No. 10-cv-0616-AWI-SKO, 2012 WL 2117001, at *10 (E.D. Cal. June 11, 2012)).

Here, plaintiffs assert that the superiority requirement is satisfied for the following reason:

> Because of the U.S. Supreme Court's binding precedent regarding applicable law on the OCS, decided in June 2019 during the pendency of this case . . ., there is simply no benefit to individual class members pursuing separate actions individually. . . . [A]ny separate actions commenced – whether in court or in arbitration – would arguably be futile in light of Supreme Court precedent.

(Doc. No. 34 at 11, 12 ("The legal issues have been tested and decided at the Supreme Court, in similar litigation for other offshore workers on the same platforms (*e.g.*, *Newton*).").) Furthermore, "[t]he instant matter has been extensively prosecuted by competent counsel on both sides, for nearly six years, including the litigation of both substantive and class/collective certification issues." (*Id.* at 12.) In addition to the named plaintiffs and putative class members being subject to the same policies and practices, plaintiffs contend that "class actions are generally superior to individual adjudications in the wage/hour context, because the alternative to a class case in the context of employment disputes is often no case at all because workers fear economic retaliation (termination)." (*Id.*) Absent class treatment, "the modest *per capita* recovery for many of the workers, particularly those with fewer workweeks in the claim period, is unlikely to be vindicated by individual cases for fear of economic retaliation." (Id. (emphasis in original).) These reasons are persuasive, and warrant finding that the superiority requirement is satisfied here.

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B. Conditional Certification of Collective Action Under FLSA[7]

As discussed above, plaintiffs seeking conditional certification of a collective action under the FLSA have the burden to show that they are "similarly situated" to other employee class members. *Litty v. Merrill Lynch & Co.*, No. cv 14-0425 PA (PJWX), 2015 WL 4698475, at *6 (C.D. Cal. Apr. 27, 2015); *see also Lewis v. Wells Fargo Co.*, 669 F. Supp. 2d 1124, 1127 (N.D. Cal. 2009). When determining whether to conditionally certify the collective action, plaintiffs can show they are "'similarly situated' by making substantial allegations, supported by declarations or discovery, that 'the putative class members were together the victims of a single decision, policy, or plan.'" *Litty*, 2015 WL 4698475, at *6; *see also Lewis*, 669 F. Supp. 2d at 1127. Courts apply a lenient standard when determining whether to conditionally certify a collective action such as this. *See Syed v. M-I, L.L.C.*, No. 1:12-cv-01718-AWI-MJS, 2014 WL 6685966, at *2 (E.D. Cal. Nov. 26, 2014).

Here, the parties contend that "[p]laintiffs and the putative collective are similarly situated because they were not paid overtime wages that included the value of lodging and meals as required under the FLSA's overtime requirements." (Doc. No. 34 at 17.) For all the reasons the requirements for preliminary certification under Rule 23 are satisfied, the proposed FLSA collective also satisfies the FLSA's less stringent requirement that the members be "similarly situated." Conditional certification of the FLSA collective is therefore appropriate.

C. Preliminary Fairness Determination

Plaintiffs also seek preliminary approval of the proposed settlement. Because it has PAGA and FLSA components, the settlement must also meet certain requirements under those acts. In addition, under Rule 23(e), a court may approve a class action settlement only if the settlement is a fair, reasonable, and adequate resolution of a *bona fide* dispute. *Bluetooth*, 654

[7] In its order for supplemental briefing, the court noted that defendant previously opposed the conditional certification of a FLSA collective in this case. (*See* Doc. No. 33 at 9–10.) In response, the joint supplemental brief provides that, "[a]lthough [defendant] disputed conditional certification in the context of litigation, for settlement purposes alone, the parties agree that it is appropriate to conditionally certify the FLSA collective in order to provide [defendant's] employees who worked and lodged offshore an opportunity to evaluate the settlement terms and 'opt-in' if they seek to participate." (Doc. No. 34 at 18.)

F.3d at 946. "[P]reliminary approval of a settlement has both a procedural and substantive component." *Tableware Antitrust Litig.*, 484 F. Supp. 2d at 1079 (citing *Schwartz v. Dall. Cowboys Football Club, Ltd.*, 157 F. Supp. 2d 561, 570 n.12 (E.D. Pa. 2001)). In particular, preliminary approval of a settlement and notice to the proposed class is appropriate if: (i) the proposed settlement appears to be the product of serious, informed, non-collusive negotiations; and (ii) the settlement falls within the range of possible approval, has no obvious deficiencies, and does not improperly grant preferential treatment to class representatives or segments of the class. *Id.*; *see also Ross v. Bar None Enters., Inc.*, No. 2:13–cv–00234–KJM–KJN, 2014 WL 4109592, at *9 (E.D. Cal. Aug. 19, 2014).

1. PAGA Component

PAGA requires that a proposed settlement be submitted to the LWDA. Cal. Lab. Code § 2699(l)(2); *see also Haralson v. U.S. Aviation Servs. Corp.*, 383 F. Supp. 3d 959, 971 (N.D. Cal. 2019) (noting that a proposed settlement should be submitted to the LWDA to allow it to comment if it so desires) (citing *Ramirez v. Benito Valley Farms, LLC*, No. 16-cv-04708-LHK, 2017 WL 3670794, at *2 (N.D. Cal. Aug. 25, 2017)). Here, plaintiffs aver that the proposed settlement was submitted to the LWDA on December 14, 2020. (Supp. Hefelfinger Decl., Doc. No. 34-1 ¶ 10; *see id.*, Ex. 2 (providing email confirmation of the LWDA's receipt of the settlement on December 15, 2020).) To date, the LWDA has neither objected to nor commented on the settlement. (*Id.* ¶ 11.) The court will thus address the fairness, reasonableness, and adequacy of the PAGA penalties below.

2. FLSA Component

The parties assert that there are *bona fide* disputes about whether defendant complied with the FLSA's requirements. (*See* Doc. No. 34 at 18–22.) First, while plaintiffs claim that defendant violated the FLSA by excluding lodging and meals from the regular rate of pay, defendant contends that "lodging and meals were not compensation for hours worked but payments which are expressly required to be excluded under the FLSA." (*Id.* at 19 (citing 29 U.S.C. § 207(e)(2), 29 C.F.R. § 778.224(a)–(b)).) Second, the parties disagree over the applicable claims period with respect to the FLSA collective. (Doc. No. 34 at 20, 21.) In

particular, the parties dispute whether defendant's exclusion of lodging and meals was willful. *See* 29 U.S.C. § 255(a) (providing the statute of limitations for FLSA claims is two years or three years in cases involving willful violations). Furthermore, plaintiffs maintain that the relation back doctrine applies and thus the claim period is three years prior to the filing of the original complaint, whereas defendant contends that the appropriate date is three years before the filing of the amended complaint. (Doc. No. 34 at 20.)

Third, the parties state that "even were a court to find lodging and meals were regarded as wages, there is a *bona fide* dispute that any wages would be due—whether [defendant's] payment of overtime and double time wages creates a complete offset of any overtime adjustments to the regular rate of pay." (Doc. No. 34 at 20; *see* Ex. 3, Supp. Hefelfinger Decl., Doc. No. 34-1 at 18–19 (providing "a chart that reflects how [defendant] claims the offset amount would be calculated in this matter.").) Plaintiffs argue that "if the value of lodging and meals were used to calculate the regular rate of pay there would result an increased overtime rate under the FLSA and Plaintiffs would be owed the difference between wages paid and that adjusted rate." (*Id.* at 20.) On the other hand, defendant "asserts a complete offset for the double time premiums it paid employees each shift," reasoning that "because putative class members have been paid overtime and double time on a daily basis, when federal law only requires overtime rates after 40 total hours in a week (not by day), the double time premiums [defendant] has paid will offset any FLSA overtime award." (*Id.* (citations omitted).)

Fourth, it is disputed between the parties "whether putative class members who participated in a prior class action settlement are barred from litigating the FLSA and other state claims that arose prior to March 26, 2015." (*Id.* at 21 (citing *McDougle v. Ensign United States Drilling (Cal.) Inc.*, Kern Cnty. Superior Ct. Case No. S-1500-CV-279842-LHB).) Finally, the parties claim that "there is a *bona fide* dispute regarding whether Calderon and other putative collective members who signed arbitration agreements would be permitted to participate in a FLSA collective action." (Doc. No. 34 at 22.) Defendant contends that plaintiff Calderon and those class members "who worked for [defendant] any time after late 2015 have signed arbitration agreements with class and representative action waivers[,]" while plaintiffs counter

that "the arbitration agreements 'carve out' the class claims that were already pending as of the date those agreements were signed and, insofar that the FLSA claim relates back to the filing of the original complaint on June 22, 2015, the FLSA claim is not governed by the arbitration agreements." (*Id.*) Based on all of the foregoing, the court is satisfied that there are *bona fide* disputes at issue here.

3. Procedural Fairness

The court must consider whether the process by which the parties arrived at their settlement is truly the product of arms-length bargaining, rather than collusion or fraud. *Millan v. Cascade Water Servs., Inc.*, 310 F.R.D. 593, 613 (E.D. Cal. 2015). A settlement is presumed fair if it "follow[s] sufficient discovery and genuine arms-length negotiation." *Adoma v. Univ. of Phx., Inc.*, 913 F. Supp. 2d 964, 977 (E.D. Cal. 2012) (quoting *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004)). Here, the parties assert that their "settlement negotiations have been non-collusive, adversarial, and at arms'-length[,]" with each side represented by competent and experienced counsel. (Hefelfinger Decl., Doc. No. 30-1 ¶¶ 11, 18.) Additionally, the "substantive legal issues in this matter were subject to contested motion practice and appellate review, further evidencing the hard-fought nature of the claims and defenses." (*Id.*)

As noted above, the parties engaged in three separate mediations, with the last two sessions conducted by experienced class action mediator Justice Kane. (*Id.* ¶¶ 6, 8, 15.) Prior to those mediation sessions, the parties engaged in substantial discovery, and defendants provided plaintiffs with "information pertaining to the putative class members' work schedules, workplace policies, meal and rest period practices, and pay practices." (*Id.* ¶ 12.) Plaintiffs' counsel also represents that they conducted extensive legal research and factual analysis to understand the claims, potential defenses, and strengths and weaknesses for class certification and on the merits. (*Id.* ¶¶ 12–13.) Furthermore, the Ninth Circuit and Supreme Court decisions in *Newton* directly impacted plaintiffs' case, with the Supreme Court's decision in *Newton* "effectively vitiat[ing] the most valuable of the Plaintiffs' theories of recovery." (*Id.* ¶ 22.) After the third mediation session, the parties reached settlement only through a mediator's proposal. (*Id.* ¶¶ 15–16.) The

parties subsequently worked together to formalize the proposed settlement agreement. (*Id.* ¶ 16.) Based on these representations by counsel, it appears that the parties' negotiation constituted genuine, informed, arms-length bargaining.

4. Substantive Fairness

a. *Adequacy of Settlement Amount*

To evaluate the fairness of the settlement award, the court should "compare the terms of the compromise with the likely rewards of litigation." *See Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). "It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not *per se* render the settlement inadequate or unfair." *Mego*, 213 F.3d at 459. To determine whether a settlement "falls within the range of possible approval" a court must focus on "substantive fairness and adequacy," and "consider plaintiffs' expected recovery balanced against the value of the settlement offer." *Tableware Antitrust Litig.*, 484 F. Supp. 2d at 1080.

Here, the total proposed gross settlement amount is $2,400,000 to be paid by defendant for distribution to the class, payment of notice and claims administration costs, the payment of PAGA penalties to LWDA, enhancement awards to the named plaintiffs, and attorneys' fees and costs. (Ex. 3, Hefelfinger Decl., Doc. No. 30-1 at 61.) Assuming the various allocations described above are awarded in full, the net settlement fund will be worth approximately $1,395,000. (*See id.* at 60–61, 68, 79, 80.) Of that, $200,000 is allocated to settle the FLSA claims and $25,000 is allocated toward the resolution of PAGA claims. (*Id.* at 60.) The entire net settlement fund will be distributed to the participating Rule 23 and FLSA class members on a *pro rata* basis based on the number of hours each class member worked during the claims period. (*Id.* at 75.) Defendant has also agreed to separately cover the employer's share of payroll taxes on the amounts paid as wages. (*Id.* at 81.)

Plaintiffs estimate that the maximum potential damages for plaintiffs' state law claims are approximately $5,800,000 (excluding attorneys' fees and interest), making the net settlement amount of $2,200,000 allocated to the California claims a 38 percent recovery of plaintiffs' state law claims. (Doc. No. 34 at 26; Supp. Hefelfinger Decl., Doc. No. 34-1 ¶ 30.) This settlement

amount is similar to percentage recoveries California district courts have found to be reasonable for this purpose. *See, e.g.*, *Villegas v. J.P. Morgan Chase & Co.*, No. 09-00261 SBA (EMC), 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (settlement of approximately 15 percent of the maximum potential value found to be preliminarily fair); *Glass v. UBS Fin. Servs., Inc.*, No. C-06-4068, 2007 WL 221862, at *4 (N.D. Cal. Jan. 26, 2007) (settlement of approximately 25 to 35 of the maximum potential value percent was found to be reasonable).

The proposed settlement agreement also allocates approximately 8 percent of the net settlement fund to the FLSA collective only, leaving 92 percent allocated to the class claims. (Ex. 3, Hefelfinger Decl., Doc. No. 30-1 at 60.) Plaintiffs estimate that the maximum recovery of FLSA damages would be approximately $500,000 to $1,000,000, making the allocated net settlement amount of $200,000 a 40 percent to 20 percent recovery of plaintiffs' FLSA claim, respectively. (Supp. Hefelfinger Decl., Doc. No. 34-1 ¶ 25 (stating that the amount of recovery "depend[s] on the statute of limitations applied, value of lodging, enforcement of arbitration agreements, etc.").) The court finds this aspect of the proposed settlement to be a fair and reasonable resolution of a *bona fide* dispute under the FLSA. *See Thompson v. Costco Wholesale Corp.*, No. 14-cv-2778-CAB-WVG, 2017 WL 697895, at *8 (S.D. Cal. Feb. 22, 2017) ("[C]ourts that have approved settlements releasing both FLSA and Rule 23 claims generally do so only when the parties expressly allocate settlement payments to FLSA claims."); *see also Millan*, 310 F.R.D. at 602 (noting that "creation of separate settlement funds for the FLSA class and the Rule 23 class . . . would better protect absent class members"); *Khanna*, 2014 WL 1379861, at *2 (approving a hybrid settlement that allocated two-thirds of net settlement amount to state claims and one-third of net settlement amount to FLSA claims); *Pierce v. Rosetta Stone, Ltd.*, No. C 11-01283 SBA, 2013 WL 1878918, at *3 (N.D. Cal. May 3, 2013) (same).

Finally, the proposed settlement in this case also provides for $100,000 in civil PAGA penalties. (Ex. 3, Hefelfinger Decl., Doc. No. 30-1 at 60–61; *see also* Supp. Hefelfinger Decl., Doc. No. 34-1 ¶ 30 ("It is well-established that PAGA settlements, and even PAGA awards after trial, are highly variable and routinely a fraction of the maximum theoretical civil penalty amount because of the discretionary language in the PAGA statute.").) Pursuant to the PAGA, 75% of

the civil PAGA penalties, or $75,000, will go to the LWDA, and 25%, or $25,000, will remain as part of the net settlement fund. (Ex. 3, Hefelfinger Decl., Doc. No. 30-1 at 60–61; *see* Cal. Lab. Code § 2699(i).) The resulting $100,000 civil penalty thus represents 4% of the $2,400,000 gross settlement fund. The amount proposed to settle plaintiffs' PAGA claims is consistent with other PAGA settlements approved by this court. *See, e.g.*, *Syed*, 2017 WL 714367, at *13 (approving $100,000.00 in PAGA penalties for a California class with a $3,950,000 gross settlement fund). The court therefore concludes that the settlement of plaintiff's PAGA claims is fair, reasonable, and adequate in light of the PAGA's public policy goals. *See O'Connor*, 201 F. Supp. 3d at 1133.

The court now turns to whether the overall settlement is fair, reasonable, and adequate. Plaintiffs argue that the gross settlement amount reflecting a discount of the total possible recovery is appropriate here for several reasons. First, the Supreme Court's decision in *Newton* and the Ninth Circuit decisions in *Mauia* and *Parker Drilling* were issued during the pendency of this action and directly impacted plaintiffs' theories of recovery. (Hefelfinger Decl., Doc. No. 30-1 ¶ 22; *see* Doc. Nos. 35, 36.) The parties agree that these court decisions "vitiate significant portions of the offshore workers' claims – in those cases, and in this instant *Newell* matter – on the basis of federal preemption," and that the class members are left "with significantly weakened grounds for seeking damages should further litigation be pursued." (Doc. No. 36 at 2.) Despite the risks and uncertainties, "the monetary damages negotiated for the Class provides a certain and significant benefit where all signs point to the possibility of no recovery at all, should the case proceed." *Curtis v. Irwin Indus., Inc.*, Case No. 2:15-cv-02480-ODW (Ex), 2020 WL 9457057, at *6–7 (C.D. Cal. Dec. 2, 2020) ("[I]n hindsight, it is clear that Plaintiffs had no guarantee of recovery, given that recent Supreme Court precedent indicates that the overtime and minimum wage claims originally failed as a matter of law."); *see also McClure v. Brand Energy Servs.*, No. 2:18-cv-01726-KJM-AC, 2021 WL 2168149, at *8 (E.D. Cal. May 27, 2021) (granting preliminary approval of a settlement where "issues of first impression following [*Newton*] would likely engender appeals if this litigation goes further, injecting ongoing uncertainty, expense, and delay into the case" and that "[t]he parties engaged in significant negotiation in the shadow of unresolved legal issues.").

Second, plaintiffs allege that defendant is "liable for unpaid wages, meal premiums, reimbursements, and related penalties and interest" as a result of its common policies and practices, whereas defendant disputes such allegations, contending that plaintiffs were properly treated and regardless, plaintiffs' "state law claims would not extend to the [OCS]." (Doc. No. 30 at 23.) Third, other factors, such as "the likelihood of obtaining and maintaining class certification with employees stationed at Defendant's worksites that are located on different federal and state offshore platforms, and the existence of certain arbitration and release agreements which Defendant would argue affected the putative class," further support preliminary approval of the agreed-upon settlement. (Hefelfinger Decl., Doc. No. 30-1 ¶ 23.) Considering these anticipated defenses and circumstances, the court will preliminarily approve the amount offered to settle the class and FLSA claims as reasonable.

b. *Attorneys' Fees*

When a negotiated class action settlement includes an award of attorneys' fees, the fee award must be evaluated in the overall context of the settlement. *Knisley v. Network Assocs.*, 312 F.3d 1123, 1126 (9th Cir. 2002); *see* Fed. R. Civ. P. 23(e)(2)(C)(iii) (considering "the terms of any proposed award of attorney's fees, including timing of payment" in determining whether a proposed settlement is "fair, reasonable, and adequate"). At the same time, the court "ha[s] an independent obligation to ensure that the award, like the settlement itself, is reasonable, even if the parties have already agreed to an amount." *Bluetooth*, 654 F.3d at 941; *see also Briseño*, 998 F.3d at 1024 ("[T]he new Rule 23(e) makes clear that courts must balance the 'proposed award of attorney's fees' vis-à-vis the 'relief provided for the class' in determining whether the settlement is 'adequate' for class members."); *Zucker v. Occidental Petroleum Corp.*, 192 F.3d 1323, 1328–29 (9th Cir. 1999). Where, as here, fees are to be paid from a common fund, the relationship between the class members and class counsel "turns adversarial." *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1302 (9th Cir. 1994). As a result, the district court must assume a fiduciary role for the class members in evaluating a request for an award of attorneys' fees from the common fund. *Id.*; *see also Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 968 (9th Cir. 2009).

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The Ninth Circuit has approved two methods for determining attorneys' fees in cases where the fee award is taken from the common fund set aside for the entire settlement: the "percentage of the fund" method and the "lodestar" method. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002) (citations omitted). The district court retains discretion in common fund cases to choose either method. *Id.*; *Vu v. Fashion Inst. of Design & Merch.*, No. cv 14-08822 SJO (EX), 2016 WL 6211308, at *5 (C.D. Cal. Mar. 22, 2016). Under either approach, "[r]easonableness is the goal, and mechanical or formulaic application of either method, where it yields an unreasonable result, can be an abuse of discretion." *Fischel v. Equitable Life Assurance Soc'y of U.S.*, 307 F.3d 997, 1007 (9th Cir. 2002).

Under the percentage of the fund method, the court may award class counsel a given percentage of the common fund recovered for the class. *Id.* In the Ninth Circuit, a 25 percent award is the "benchmark" percentage for attorneys' fees. *See Bluetooth*, 654 F.3d at 947 (setting a 25 percent benchmark); *Staton*, 327 F.3d at 952 (same); *Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990) (same). An explanation is necessary when the district court departs from the 25 percent benchmark. *Powers v. Eichen*, 229 F.3d 1249, 1256–57 (9th Cir. 2000).

Plaintiffs bring various state law claims and, under California law, "[t]he primary method for establishing the amount of reasonable attorney fees is the lodestar method." *In re Vitamin Cases*, 110 Cal. App. 4th 1041, 1053 (2003) (internal quotation marks and citations omitted). Under that method, the court determines the lodestar amount by multiplying a reasonable hourly rate by the number of hours reasonably spent litigating the case. *See Ferland v. Conrad Credit Corp.*, 244 F.3d 1145, 1149 (9th Cir. 2001). The product of this computation, the "lodestar" amount, yields a presumptively reasonable fee. *See Gonzalez v. City of Maywood*, 729 F.3d 1196, 1202 (9th Cir. 2013); *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 978 (9th Cir. 2008). The Ninth Circuit has recommended that district courts apply one method but cross-check the appropriateness of the amount by employing the other as well. *See Bluetooth*, 654 F.3d at 944.

Here, the proposed settlement provides that class counsel will seek an award of $840,000, which is 35 percent of the settlement amount. (Ex. 3, Hefelfinger Decl., Doc. No. 30-1 at 79.)

This is higher than the 25 percent benchmark for the Ninth Circuit, *Bluetooth*, 654 F.3d at 942, but not at all uncommon for wage-and-hour class actions in the Eastern District of California and elsewhere. *Barbosa v. Cargill Meat Sols. Corp.*, 297 F.R.D. 431, 450 (E.D. Cal. 2013) (listing cases where courts approved attorneys' fees of about one-third of the total settlement); *see, e.g.*, *Castro v. Paragon Indus., Inc.*, No. 1:19-cv-00755-DAD-SKO, 2020 WL 1984240, at *15–16 (E.D. Cal. Apr. 27, 2020) (preliminarily approving an award of 35 percent of the gross settlement fund).

Here, plaintiffs' counsel asserts that the amount sought in attorney's fees here is appropriate considering the time and effort expended by counsel, the contingency fee basis of the representation, the substantial size of the proposed settlement, and the relative strengths and weaknesses of the claims. (Doc. No. 34 at 13 (identifying the Supreme Court's decision in *Newton* and subsequent adverse rulings as examples of significant risks in this litigation); Supp. Hefelfinger Decl., Doc. 34-1 ¶ 12.) Additionally, this "action was commenced in June of 2015, and has been heavily litigated in both state and federal court since that time, including substantive and procedural motion practice, deposition discovery, and multiple mediation sessions." (Supp. Hefelfinger Decl., Doc. No. 34-1 ¶ 13.) Plaintiffs' counsel estimates that "[a]pproximately 600 hours and close to $15,000 in out-of-pocket expenses have been devoted to litigating the case for almost six years[,]" and that "an additional 100 hours may be expended over the course of the next year by the two proposed class counsel firms, through final approval phase, monitoring the 2-step funding process that is being utilized in this matter, and communicating with class members all the while." (*Id.* ¶ 14.)

For purposes of preliminary approval, the court is satisfied with the justifications provided by plaintiffs' counsel in the supplemental briefing that a departure from the 25 percent benchmark is warranted here. In connection with final approval, however, the court will again examine the award of attorneys' fees, and plaintiffs' counsel is directed to provide the court with the necessary records to allow the court to conduct a lodestar cross-check at that time.

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c. *Enhancement Awards*

While incentive awards are "fairly typical in class action cases," they are discretionary sums awarded by the court "to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." *West Publ'g Corp.*, 563 F.3d at 958–59; *Staton*, 327 F.3d at 977 ("[N]amed plaintiffs . . . are eligible for reasonable incentive payments."). Such payments are to be evaluated individually, and the court should look to factors such as "the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, . . . the amount of time and effort the plaintiff expended in pursuing the litigation . . . and reasonabl[e] fear[s of] workplace retaliation." *Staton*, 327 F.3d at 977 (quoting *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998)).

Here, plaintiffs seek two enhancement awards.[8] First, plaintiff Newell seeks an enhancement award of $35,000 which is approximately 1.5% of the overall settlement amount. (Ex. 3, Hefelfinger Decl., Doc. No. 30-1 at 80.) He estimates that he has spent in excess of 275 hours over five years of litigation beginning in June 2015. (Newell Decl., Doc. No. 30-2 ¶ 25.) In support of his requested award, plaintiff Newell declares that he: (1) spoke with or emailed class counsel about the litigation, on average, at least once every few weeks or more frequently depending on litigation or negotiation events, to obtain updates and to provide insight; (2) traveled to Bakersfield, California, for two mediation sessions and incurred personal travel expenses; (3) actively participated in all three mediation sessions and in discussions regarding the claims and defenses; and (4) reviewed evidence, transcripts, pleadings, motions, other briefs, declarations, deposition outlines, discovery requests and responses, and the stipulation of settlement. (*Id.* ¶¶ 20–26.) Furthermore, plaintiff Newell states that he risked his personal assets

[8] "If the Court approves an enhancement of less than the amounts requested for the Named Plaintiffs, then the unapproved portion or portions shall revert into the Net Settlement Amount to be distributed between the participating Settlement Class members on a pro-rata basis. This settlement is not conditional upon any specific amount being awarded as an enhancement to the Named Plaintiffs." (Ex. 3, Hefelfinger Decl., Doc. No. 30-1 at 80.)

"because [his] fee agreement with Class Counsel obligates [him] to pay litigation costs and there was always the risk that [he] would have to pay Defendant's costs if [they] lost the case." (*Id.* ¶ 29.)

Second, plaintiff Calderon seeks an enhancement award of $25,000, which is approximately 1% of the overall settlement amount. (Ex. 3, Hefelfinger Decl., Doc. No. 30-1 at 80.) Plaintiff Calderon estimates that he has spent in excess of 150 hours over two years of litigation beginning in early 2019. (Calderon Decl., Doc. No. 30-3 ¶ 25.) In support of his requested incentive award, plaintiff Calderon declares that he: (1) spoke with or emailed class counsel about the litigation, on average, at least once every few weeks or more frequently depending on litigation or negotiation events, to obtain updates and to provide insight; (2) actively participated in the September 2020 mediation session, which took place on Zoom, and in discussions about the claims and defenses; and (3) reviewed evidence, transcripts, pleadings, motions, other briefs, declarations, deposition outlines, discovery requests and responses, and the stipulation of settlement. (*Id.* ¶¶ 20–26.) Plaintiff Calderon also states that he risked his personal assets "because [his] fee agreement with Class Counsel obligates [him] to pay litigation costs and there was always the risk that [he] would have to pay Defendant's costs if [they] lost the case." (*Id.* ¶ 29.) Finally, plaintiff Calderon states that he was "laid off by [defendant] *during the pendency of the case*," and believes that his "layoff was, at least in part, due to mention of [his] name as a named plaintiff in the action starting in 2019."[9] (*Id.* ¶ 27 (emphasis in original).)

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[9] Plaintiffs' counsel Brian D. Hefelfinger also provides the following support in favor of the requested enhancement awards:

> This case has taken longer and required more time of the class representative(s) . . . as it was filed back in 2015 and has involved much more motion work, discovery and deposition work, and more mediation sessions, all of which both counsel and the class representative(s) have participated in.

(Supp. Hefelfinger Decl., Doc. No. 34-1 ¶ 16; *see also id.* ¶ 15 (citing *Fuller v. Zep, Inc.*, N.D. Cal. Case No. 4:18-cv-02672-JSW, where "the court awarded the class representative a $30,000 incentive award for recovering a $1.5M fund on behalf of approximately 289 workers.").)

Incentive awards of $35,000 and $25,000 amount to approximately 2.5 percent of the overall settlement amount of $2,400,000. In comparison, the calculations provided in the parties' joint supplement brief estimate that participating class members will receive between $4.70 and $41,097.98, and participating FLSA collective members will receive between $0.78 and $6,820.51, based on each member's hours worked.[10] (Supp. Hefelfinger Decl., Doc. No. 34-1 ¶ 33 (stating "the average settlement payment for state claims would be $3,948.00" and "the average FLSA Payment would be $655.20"); *see also id.* ¶¶ 34–35 (providing examples of the estimated total payments a long-term employee ($35,000) and short-term employee ($5,000) would receive).)

While incentive awards of $35,000 and $25,000 are substantially higher than the average amount a class member could expect to receive, these awards may also be lower than the maximum amount some class members may receive. However, such awards are still larger than those generally awarded by the courts. *See, e.g.*, *Aguilar v. Wawona Frozen Foods*, No. 1:15-cv-00093-DAD-EPG, 2017 WL 2214936, at *8 (E.D. Cal. May 19, 2019) (and cases cited therein); *Ontiveros v. Zamora*, 303 F.R.D. 356, 365–66 (E.D. Cal. Oct. 8, 2014) (approving enhancement award of $15,000 where class representative spent 271 hours over six years on the case and the average class member award of $3,700); *Wise v. Ulta Salon, Cosms. & Fragrance, Inc.*, No. 1:17-cv-00853-DAD-EPG, 2019 WL 3943859, at *11 (E.D. Cal. Aug. 21, 2019) (approving $10,000 incentive awards each to two class representatives, which amounted to 0.6 percent of the overall settlement amount of $3,400,000); *Arredondo v. Delano Farms Co.*, Case No. 1:09-cv-01247-MJS, 2017 WL 4340204, at *2–3 (E.D. Cal. Sept. 29, 2017) (reducing five enhancement awards from the requested $25,000 each to $7,000 each). *But see Glass*, 2007 WL 221862, at *16–17 (approving requested incentive awards of $25,000 to each of the four class representatives out of total settlement amount of $45,000,000).

[10] "The calculations also show that the average number of hours per settlement class member for this claims period at the time of mediation was around 1680 hours. The highest number of hours per class member was 17,488.5 and the lowest number of hours was 2 hours." (Supp. Hefelfinger Decl., Doc. No. 34-1 ¶ 33; *see also* Doc. No. 34 at 24–25, 26 (finding 509,131 total hours during the claims period).)

Furthermore, the combined enhancement awards sought by plaintiffs would make up 2.5 percent of the total settlement amount of $2,400,000, which is also unusually high. *See, e.g.*, *Monterrubio v. Best Buy Stores, L.P.*, 291 F.R.D. 443, 463 (E.D. Cal. 2013) (finding that a proposed incentive payment of $7,500 was excessive where it comprised 1.8 percent of total settlement amount ($400,000) and the average class member's share of the settlement was $65.79); *Ko v. Natura Pet Prods., Inc.*, Civ. No. 09-2619 SBA, 2012 WL 3945541, at *15 (N.D. Cal. Sept. 10, 2012) (holding that an incentive award of $20,000, comprising one percent of the approximately $2,000,000 common fund was "excessive under the circumstances" and reducing the award to $5,000); *Brecher v. Citigroup Glob. Mkts., Inc.*, CASE NO. 09-cv-1344-CAB (MDD), 2015 WL 13344782, at *4–5 (S.D. Cal. Feb. 6, 2015) (finding that a requested incentive awards of $25,000 each to three class representatives, which amounted to two percent of the $3,700,000 settlement fund, exceeded common incentive awards and reducing those awards to $10,000 each); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 267–68 (N.D. Cal. 2015) (finding that the requested incentive award of $20,000, which was two percent of the gross settlement award of $1,00,000, was high and decreasing the award to $15,000).

Having reviewed the proposed $35,000 and $25,000 enhancement awards, respectively, the court notes that the amounts requested may be disproportionate given the possible disparity with the settlement's average or median award of $3,948. However, the court gives some weight to the evidence submitted by the parties indicating that the named plaintiffs, particularly plaintiff Newell, have taken on considerable risk and have dedicated to this litigation an unusual amount of time. Accordingly, the court will preliminarily approve the enhancement awards on the condition that plaintiffs demonstrate in detail the nature of those risks and commitments and provide clear comparisons that enable the court to determine the extent to which those awards in fact may dwarf the average or median award received by the Rule 23 class and FLSA collective members in cases similar to this one. *See Radcliffe v. Experian Info. Sols. Inc.*, 715 F.3d 1157, 1163 (9th Cir. 2013) (urging district courts to be "vigilant in scrutinizing all incentive awards to determine whether they destroy the adequacy of the class representatives.") (citation omitted).

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d. *Release of Claims*

As part of this proposed settlement, the released claims are limited to "all state Class Claims against any of the Released Parties[11] arising in the Settlement Period that were alleged in the Litigation or that could have been raised based on the facts alleged in the Litigation or Complaint." (Ex. 3, Hefelfinger Decl., Doc. No. 30-1 at 65–66; *see id.* at 57–58 (listing class claims).) All settlement class members who do not opt out will be deemed to have released defendant from the released claims. (*Id.* at 65–66.) For members of the FLSA collective, FLSA claims will only be released for those who affirmatively opt in. (*Id.* at 66.) The release therefore appropriately tracks the claims at issue in this case.

D. Proposed Class Notice and Administration

For proposed settlements under Rule 23, "the court must direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1); *see also Hanlon*, 150 F.3d at 1025 ("Adequate notice is critical to court approval of a class settlement under Rule 23(e)."). For a class certified under Rule 23(b)(3), the notice must contain, in plain and clear language: (1) the nature of the action; (2) the definition of the class certified; (3) the class claims, issues, or defenses; (4) that a class member may appear through an attorney if desired; (5) that the court will exclude members who seek exclusion; (6) the time and manner for requesting an exclusion; and (7) the binding effect of a class judgment on members of the class. Fed. R. Civ. P. 23(c)(2)(B). A class action settlement notice "is satisfactory if it generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard." *Churchill Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (internal quotation marks and citations omitted).

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[11] The settlement agreement defines the term "released parties" as:

> (i) [defendant] and its past, present, and future parents, subsidiaries, affiliates, divisions, joint ventures, licensees, franchisees, and any other legal entities, whether foreign or domestic, and (ii) the past, present, and future shareholders, officers, directors, members, investors, agents, employees, consultants, representatives, fiduciaries, insurers, attorneys, legal representatives, predecessors, successors, and assigns of the entities listed in (i).

(Ex. 3, Hefelfinger Decl., Doc. No. 30-1 at 61.)

Additionally, for proposed settlements under the FLSA, "the court [must] provide potential plaintiffs 'accurate and timely notice concerning the pendency of the collective action, so that they can make informed decisions about whether or not to participate.'" *Adams v. Inter–Con Sec. Sys.*, 242 F.R.D. 530, 539 (N.D. Cal. 2007) (quoting *Hoffmann–La Roche v. Sperling*, 493 U.S. 165, 170 (1989)); *see generally* 29 U.S.C. § 216(b) ("No employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought.").

Here, the proposed settlement provides that, within ten days of preliminary approval, the claims administrator will receive the following information about each settlement class member: (1) name, (2) last known home address, (3) last known phone number, (4) Social Security number, and (5) eligible hours worked during the relevant claim period ("Class List"). (Ex. 3, Hefelfinger Decl., Doc. No. 30-1 at 68.) The claims administrator will run the addresses provided through the United States Postal Service NCOA database to obtain current address information and subsequently mail the notice packets via first-class regular U.S. Mail within 25 days. (*Id.* at 70.) Plaintiffs assert that the class notice's contents meet the requirements of Rule 23 and provide additional information, including:[12]

> the nature of the Litigation; a summary of the terms of the Settlement; the definition of the Settlement Class; a statement that the Court has preliminarily approved the Settlement; the nature and scope of the claims being released; the procedure and time period for objecting to the Settlement[;] the date and location of the Final Approval hearing; information regarding the opt-out procedure; instructions for submitting FLSA Claim Forms; instructions for submitting Work Hours Dispute Forms; and Defendant's determination of hours worked on offshore platforms and as members of the putative class within the relevant Claim Period from the payroll records.

(*Id.*; *see* Ex. 5, Supp. Hefelfinger Decl., Doc. No. 34-1 at 37–47.)

Additionally, plaintiffs propose a FLSA notice separate from the class notice, although the class and FLSA documents will be sent in one packet. (Ex. 3, Hefelfinger Decl., Doc. No. 30-1

[12] In response to the court's order, the parties corrected the proposed class notice to reflect that the final approval hearing will be held before this court in Fresno, California. (Doc. No. 34 at 27–28; Ex. 5, Supp. Hefelfinger Decl., Doc. No. 34-1 at 38.)

at 60, 101–03.) The settlement class members will receive a consent to join/opt-in form. (*Id.* at 72, 101–03.) The court finds that plaintiffs' proposed notices provide sufficient information to allow the putative class and collective members to make an informed decision about whether to opt-out of the class or opt-in to the collective.

Plaintiffs also propose the following implementation schedule:

Date	Event
No later than ten (10) days of the date of entry of this order	Defendants' counsel will provide the claims administrator with the Class List.
No later than twenty-five (25) days after the claims administrator receives the Class List ("Notice Date")	The settlement administrator will mail to all settlement class members: (1) the class notice; (2) FLSA claim form; (3) work hours dispute form; (4) request to be excluded; and (5) self-addressed, stamped return envelope.
Thirty (30) days from Notice Date	The settlement administrator will mail to those settlement class members who have not responded to the notice a reminder post-card encouraging them to respond before the deadline.
Sixty (60) days from Notice Date	• Deadline to mail FLSA consent to join/opt-in form. • Deadline to mail dispute form to dispute number of eligible work hours listed on the form, on which the estimated settlement payment and, if applicable, FLSA settlement payment are based. • Deadline to mail written objections. • Deadline to mail request for exclusion.
To be announced in a subsequent court order.	Final fairness hearing and hearing on motion for final approval, award of attorneys' fees and costs and class representative enhancement awards.
Ten (10) days following Effective Date[13]	Defendant will deposit $1,470,000 into an interest-bearing trust account established by the settlement administrator

[13] "Effective Date" is defined in the settlement agreement as follows:

> (1) the date of final affirmation of the Final Approval from any appeal, writ, or other appellate proceeding opposing the Final Approval, the expiration of the time for, or the denial of, a petition to review the Final Approval, or if review is granted, the date of final affirmation of the Final Approval following review pursuant to that grant; or (2) the date of final dismissal of any appeal from the Final Approval or the final dismissal of any proceeding to review the Final Approval, provided that the Final Approval is affirmed and/or not

	("Initial Settlement Payment").
Within fifteen (15) days following the date of the Initial Settlement Payment	The settlement administrator will mail the (1) Net Settlement Payments to the Settlement Class, (2) court-approved enhancement payments to the named plaintiffs, and (3) administration costs.
No later than three (3) months following the date of the Initial Settlement Payment	Defendants will deposit $930,000 to the interest-bearing account established by the settlement administrator ("Final Settlement Payment").
Within fifteen (15) days following the date of the Final Settlement Payment	The settlement administrator will mail all remaining settlement payments, including: (1) court-approved attorneys' fees and litigation costs and (2) court-approved PAGA payment to the LWDA.

(*Id.* at 68–75, 77–78.)

The court finds that the notice and the manner of notice proposed by plaintiffs meet the requirements of Rule 23(c)(2)(B) and 29 U.S.C. § 216(b), and that the proposed mail delivery is also appropriate under these circumstances.

CONCLUSION

For the reasons stated above,

1. Plaintiffs' motion for preliminary approval of class action settlement (Doc. No. 30) is GRANTED;

2. Plaintiffs' counsel, Daniel J. Palay and Brian D. Hefelfinger, are appointed as class counsel;

3. The named plaintiffs, Louis Newell and Miguel Calderon, are appointed as class representatives;

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> reversed in any part; or (3) if no appeal, writ, or other appellate proceeding opposing the Final Approval is filed, the expiration date of the time for the filing or noticing of any appeal from the Court's Final Approval of the Settlement. In the event there is a timely filed motion to set aside judgment or to intervene, the expiration of the period for filing any appeal, writ, or other appellate proceeding opposing the Final Approval will be based on the date of the Court's ruling or order on any such motion or the date of Final Approval, whichever is later.

(*Id.* at 59.)

4. The proposed notice and claim form conform with Federal Rule of Civil Procedure 23 and 29 U.S.C. § 216(b) and are approved;

5. CPT Group, Inc., is approved as claims administrator;

6. The proposed settlement detailed herein is approved on a preliminary basis as fair, reasonable, and adequate;

7. The hearing for final approval of the proposed settlement will be set in a subsequent order of the court[14], with the motion for final approval of class action settlement to be filed twenty-eight (28) days in advance of the final approval hearing, in accordance with Local Rule 230; and

8. Plaintiffs' proposed settlement implementation schedule is adopted.

IT IS SO ORDERED.

Dated: **December 20, 2021**

Dale A. Drozd
UNITED STATES DISTRICT JUDGE

[14] Based upon Jennifer L. Thurston's recent confirmation to be a District Judge in the Eastern District of California, this matter is likely to be reassigned in the coming weeks. Once that reassignment occurs, the court will set a final confirmation hearing date. The court anticipates that the hearing date will be available in time for the settlement administrator to include the date, time, and location in the class notice