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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

HENNA AHMED, an individual,

Plaintiff,

v.

BEVERLY HEALTH AND
REHABILITATION SERVICES,
INC.; GGNSC ADMINISTRATIVE
SERVICES, LLC and DOES 1-100,
inclusive,

Defendants.

Civ. No. 2:16-1747 WBS KJN

MEMORANDUM AND ORDER RE: MOTION
FOR PRELIMINARY SETTLEMENT
APPROVAL

Plaintiff Henna Ahmed brought this putative class-
action lawsuit against defendants Beverly Health and
Rehabilitation Services, Inc. ("Beverly Health"), GGNSC
Administrative Services, LLC ("GGNSC Services"), and Does 1-100,
alleging that defendants violated the California Labor Code.
Presently before the court is plaintiff's unopposed Motion for
preliminary approval of the class action settlement and
provisional certification of the class. (Docket No. 34.)

I. Factual and Procedural Background

Plaintiff applied for a job as a Certified Nursing

1 Assistant with Golden Living, located at 144 F St., Galt CA
2 95632, on November 3, 2015. (First Am. Compl. ("FAC") ¶ 8, Exs.
3 1, 2, 8 (Docket No. 13).) Plaintiff was issued a badge and an
4 employee handbook and signed a number of documents which
5 identified her as an employee of Golden Living. (Id. ¶¶ 11-13.)
6 Plaintiff's wage statements from November 2015 to May 2016 listed
7 the name and address of her employer as "GGNSC Administrative
8 Services, LLC" and "144 F Street, Galt, CA 95632." (Id. ¶¶ 16,
9 18, Exs. 9, 11.) However, plaintiff's IRS Form W-2 listed the
10 name and address of her employer as "Beverley Health and
11 Rehabilitati[sic]" and "1000 FIANA WAY, FORT SMITH, AR 72919."
12 (Id. ¶ 17, Ex. 10.) Thus, plaintiff alleges defendants failed
13 to furnish wage statements accurately showing the "name and
14 address of the legal entity that is the employer" as required by
15 Labor Code § 226(a)(8). (FAC ¶ 26.)

16 Plaintiff also alleges that defendants uniformly paid
17 plaintiff, and defendants' other current and former California
18 employees, more than seven calendar days following the close of
19 the payroll period, in violation of Labor Code § 204. (FAC ¶ 28,
20 Ex. 11.) For example, for the pay period that ran from March 17,
21 2016 to March 30, 2016, plaintiff and defendants' other current
22 and former California employees were not paid until April 7,
23 2016--eight days after the close of the pay period. (FAC ¶ 28,
24 Ex. 27.) Similarly, for the pay period that ran from June 23,
25 2016 to July 6, 2016, plaintiff and defendants' other current and
26 former California employees were not paid until July 14, 2016--
27 also eight days after the close of the pay period. (FAC ¶ 28,
28 Ex. 28.)

1 If plaintiff was in fact paid for the work she
2 performed during each pay period within seven days of the end of
3 each pay period, then plaintiff alleges defendants failed to
4 accurately state the inclusive dates of the pay periods on the
5 wage statements, required by Labor Code § 226(a)(6). (FAC ¶ 29.)
6 In addition, plaintiff alleges defendants failed to maintain
7 copies of the wage statements issued to her and defendants' other
8 California employees, both current and former, for at least three
9 years, thereby violating Labor Code § 226(a). (FAC ¶ 33.)

10 On June 3, 2016, class counsel sent written notice to
11 the California Labor and Workforce Development Agency ("Labor
12 Agency") and defendants regarding alleged violations of Labor
13 Code section 226(a)(8)--that the wage statements maintained for
14 Beverly Health employees inaccurately showed the name and address
15 of their employer as "GGNSC ADMINISTRATIVE SERVICES, LLC" and
16 "144 F Street, Galt, CA 95632." (Pl.'s Mem. at 2 (Docket No 34-1
17).) In response, defendants adjusted their payroll system
18 effective June 16, 2016, to ensure that all future wage
19 statements had Beverly Health's name and address clearly listed
20 on top of each wage statement. (Id.)

21 On September 1, 2016, class counsel sent written notice
22 to the Labor Agency and defendants regarding alleged violations
23 of Labor Code sections 204 and 226(a)(6)--that defendants failed
24 to timely pay employees or to accurately set forth the inclusive
25 dates of the pay period for which their employees were being
26 paid. (Id.) Almost immediately, defendants undertook efforts to
27 remedy these violations. (Id.)

28 On November 10, 2016, plaintiff filed a First Amended

1 Complaint alleging the following: (1) failure to furnish accurate
2 itemized wage statements in violation of California Labor Code §
3 226(a)(8); (2) failure to maintain copies of accurate itemized
4 wage statements in violation of California Labor Code § 226(a),
5 and (3) failure to timely pay wages in violation of California
6 Labor Code § 204. (See FAC.) Plaintiff also asserts individual
7 claims for disability discrimination and retaliation under the
8 California Fair Employment and Housing Act ("FEHA"). (Id.)

9 Based on the alleged violations of California Labor
10 Code §§ 226(a)(8), 226(a)(6), and 204, plaintiff seeks to certify
11 a class of "[a]ll current and former California employees of
12 Beverly Health and Rehabilitation Services, Inc. who were issued
13 one or more wage statements from July 25, 2015, through September
14 1, 2016." (Decl. of Robert Wasserman Ex. 1, Settlement Agreement
15 ¶ 7 (Docket No. 34-2); Pl.'s Mem at 2.) The parties litigated
16 this case for over a year before finalizing a settlement
17 agreement on December 11, 2017. (Pl.'s Mem. at 3.) Plaintiffs
18 now seek preliminary approval of the parties' stipulated class-
19 wide settlement, pursuant to Federal Rule of Civil Procedure
20 23(e).

21 II. Discussion

22 Rule 23(e) provides that "[t]he claims, issues, or
23 defenses of a certified class may be settled . . . only with the
24 court's approval." Fed. R. Civ. P. 23(e). "Approval under 23(e)
25 involves a two-step process in which the Court first determines
26 whether a proposed class action settlement deserves preliminary
27 approval and then, after notice is given to class members,
28 whether final approval is warranted." Nat'l Rural Telecomms.

1 Coop. v. DIRECTV, Inc., 221 F.R.D. 523, 525 (C.D. Cal. 2004)
2 (citing Manual for Complex Litig., Third, § 30.41 (1995)).

3 This Order is the first step in that process and
4 analyzes only whether the proposed class action settlement
5 deserves preliminary approval. See Murillo v. Pac. Gas & Elec.
6 Co., 266 F.R.D. 468, 473 (E.D. Cal. 2010) (Shubb, J.)
7 Preliminary approval authorizes the parties to give notice to
8 putative class members of the settlement agreement and lays the
9 groundwork for a future fairness hearing, at which the court will
10 hear objections to (1) the treatment of this litigation as a
11 class action and (2) the terms of the settlement. See id.; Diaz
12 v. Tr. Territory of Pac. Islands, 876 F.2d 1401, 1408 (9th Cir.
13 1989) (stating that a district court's obligation when
14 considering dismissal or compromise of a class action includes
15 holding a hearing to "inquire into the terms and circumstances of
16 any dismissal or compromise to ensure that it is not collusive or
17 prejudicial."). The court will reach a final determination as to
18 whether the parties should be allowed to settle the class action
19 on their proposed terms after that hearing.

20 The Ninth Circuit has declared a strong judicial policy
21 favoring settlement of class actions. Class Plaintiffs v. City
22 of Seattle, 955 F.2d 1268, 1276 (9th Cir. 1992). Nevertheless,
23 where, as here, "the parties reach a settlement agreement prior
24 to class certification, courts must peruse the proposed
25 compromise to ratify both [1] the propriety of the certification
26 and [2] the fairness of the settlement." Staton v. Boeing Co.,
27 327 F.3d 938, 952 (9th Cir. 2003).

28 The first part of this inquiry requires the court to

1 "pay 'undiluted, even heightened, attention' to class
2 certification requirements" because, unlike in a fully litigated
3 class action suit, the court "will lack the opportunity . . . to
4 adjust the class, informed by the proceedings as they unfold."
5 Amchem Prods. Inc. v. Windsor, 521 U.S. 591, 620 (1997); see
6 Hanlon v. Chrysler Corp., 150 F.3d 1011, 1019 (9th Cir. 1998).
7 The parties cannot "agree to certify a class that clearly leaves
8 any one requirement unfulfilled," and consequently the court
9 cannot blindly rely on the fact that the parties have stipulated
10 that a class exists for purposes of settlement. See Windsor, 521
11 U.S. at 621-22 (stating that courts cannot fail to apply the
12 requirements of Rule 23(a) and (b)).

13 The second part of this inquiry obliges the court to
14 "carefully consider 'whether a proposed settlement is
15 fundamentally fair, adequate, and reasonable,' recognizing that
16 '[i]t is the settlement taken as a whole, rather than the
17 individual component parts, that must be examined for overall
18 fairness'" Staton, 327 F.3d at 952 (quoting Hanlon, 150
19 F.3d at 1026); see also Fed. R. Civ. P. 23(e) (outlining class
20 action settlement procedures).

21 A. Class Certification

22 A class action will be certified only if it meets the
23 four prerequisites identified in Rule 23(a) and additionally fits
24 within one of the three subdivisions of Rule 23(b). Fed. R. Civ.
25 P. 23(a)-(b). Although a district court has discretion in
26 determining whether the moving party has satisfied each Rule 23
27 requirement, the court must conduct a rigorous inquiry before
28 certifying a class. See Califano v. Yamasaki, 442 U.S. 682, 701

1 (1979); Gen. Tel. Co. of Sw. v. Falcon, 457 U.S. 147, 161 (1982).

2 1. Rule 23(a)

3 Rule 23(a) restricts class actions to cases where:
4 (1) the class is so numerous that joinder of all
5 members is impracticable; (2) there are questions
6 of law or fact common to the class; (3) the claims
7 or defenses of the representative parties are
8 typical of the claims or defenses of the class;
9 and (4) the representative parties will fairly and
10 adequately protect the interests of the class.

11 Fed. R. Civ. P. 23(a). These requirements are commonly referred
12 to as numerosity, commonality, typicality, and adequacy of
13 representation.

14 a. Numerosity

15 Under the first requirement, “[a] proposed class of at
16 least forty members presumptively satisfies the numerosity
17 requirement.” Avilez v. Pinkerton Gov’t Servs., 286 F.R.D. 450,
18 456 (C.D. Cal. 2012); see also, Collins v. Cargill Meat Solutions
19 Corp., 274 F.R.D. 294, 300 (E.D. Cal. 2011) (Wanger, J.) (“Courts
20 have routinely found the numerosity requirement satisfied when
21 the class comprises 40 or more members.”). Here, plaintiff
22 estimates that the settlement class will contain “approximately
23 1,500 Class Members.” (Pl.’s Mem. at 4.) This satisfies Rule
24 23’s numerosity requirement.

25 b. Commonality

26 Commonality requires that the class members’ claims
27 “depend upon a common contention” that is “capable of classwide
28 resolution--which means that determination of its truth or
falsity will resolve an issue that is central to the validity of
each one of the claims in one stroke.” Wal-Mart Stores, Inc. v.
Dukes, 131 S. Ct. 2541, 2550 (2011). “[A]ll questions of fact

1 and law need not be common to satisfy the rule," and the
2 "existence of shared legal issues with divergent factual
3 predicates is sufficient, as is a common core of salient facts
4 coupled with disparate legal remedies within the class." Hanlon,
5 150 F.3d at 1019.

6 Here, the settlement class is comprised of "[a]ll
7 current and former California employees of Beverly Health and
8 Rehabilitation Services, Inc. who were issued one or more wage
9 statements from July 25, 2015, through September 1, 2016."

10 (Decl. of Robert Wasserman Ex. 1, Settlement Agreement ¶ 7.)

11 These claims all flow from the same facts and legal claims that
12 allege that defendants failed to furnish and maintain wage
13 statements that comply with the California Labor Code.

14 Accordingly, the settlement class meets Rule 23's commonality
15 requirement.

16 c. Typicality

17 Typicality requires that the named plaintiff have
18 claims "reasonably coextensive with those of absent class
19 members," but does not require their claims to be "substantially
20 identical." Hanlon, 150 F.3d at 1020. The test for typicality
21 "is whether other members have the same or similar injury,
22 whether the action is based on conduct which is not unique to the
23 named plaintiff[], and whether other class members have been
24 injured by the same course of conduct." Hanon v. Dataproducts
25 Corp., 976 F.2d 497, 508 (9th Cir. 1992) (citation omitted).

26 Again, plaintiff avers that defendants furnished and
27 maintained wage statements for plaintiff and all other class
28 members and that these statements failed to comply with the

1 California Labor Code. Thus, plaintiff and class members have
2 allegedly been injured by the same system-wide policies and
3 practices, received wage statements with the same deficiencies,
4 and seek the same penalties. Accordingly, plaintiff has met Rule
5 23's typicality requirement.

6 d. Adequacy of Representation

7 Rule 23(a)(4) requires a showing that the proposed
8 class representatives "will fairly and adequately protect the
9 interests of the class." Fed. R. Civ. P. 23(a)(4). In deciding
10 whether plaintiff has met that requirement, the court must answer
11 two questions: "(1) do the named plaintiff[] and [his] counsel
12 have any conflicts of interest with other class members and (2)
13 will the named plaintiff[] and [his] counsel prosecute the action
14 vigorously on behalf of the class?" Hanlon, 150 F.3d at 1020.

15 With respect to the first question, plaintiff is a
16 member of the class and her interests appear to be aligned with
17 those of the class. Thus, any beneficial recovery for plaintiff
18 would be beneficial to each class member, and there appears to be
19 no conflicts between plaintiff as class representative and the
20 class members. While the settlement provides for an incentive
21 reward \$4,500 to plaintiff, or 1% of the Gross Settlement Amount
22 in consideration for her service as class representative (Decl.
23 of Robert Wasserman ¶ 23), federal courts have generally held
24 that such awards do not create conflicts of interest as to defeat
25 class settlements.¹ See Staton, 327 F.3d at 977-78 (holding that

26 ¹ "Incentive awards are payments to class representatives
27 for their service to the class in bringing the lawsuit."
28 Radcliffe v. Experian Info. Sols. Inc., 715 F.3d 1157, 1163 (9th
Cir. 2013).

1 "reasonable incentive payments" do not create conflicts of
2 interest as to defeat class settlements); Hopson v. Hanesbrands
3 Inc., Civ. No. 08-0844 EDL, 2009 WL 928133, at *10 (N.D. Cal.
4 Apr. 3, 2009) ("In general, courts have found that \$5,000
5 incentive payments are reasonable."); Alberto v. GMRI, Inc., 252
6 F.R.D. 652, 669 (E.D. Cal. 2008) (holding the same). The courts
7 have held the same with respect to class counsel's plans to apply
8 for a 33% attorneys' fee. See Garnett v. ADT, LLC, Civ. No.
9 2:14-25851 WBS AC, 2016 WL 3538354, at *4 (E.D. Cal. June 28,
10 2016) (counsel's application for 33% fee does not defeat class
11 certification).

12 In contrast, each member of the proposed class will
13 recover approximately \$175 under the terms of the settlement
14 agreement. (Pl.'s Mem. at 4.) An incentive award of \$4,500 to
15 the plaintiff is somewhat disproportionate to the recovery of
16 other class members. See, e.g., Monterrubio v. Best Buy Stores,
17 L.P., 291 F.R.D. 443, 463 (E.D. Cal. 2013) (England, J.) (finding
18 \$7,500 incentive award unreasonable when average class member
19 would receive \$65.79 and reducing the award to \$2,500). This
20 disproportionality does not automatically render plaintiff an
21 inadequate class representative, but it gives the court pause,
22 particularly given the lack of evidence before the court
23 demonstrating the quality of plaintiff's representative service.²

24
25 ² In his declaration, plaintiff's counsel states
26 "Plaintiff . . . has demonstrated her ability to advocate for the
27 interests of the putative class by initiating this litigation,
28 bringing about the June 2016 and September 2016 revisions to
defendants' wage statements, and helping facilitate the
Settlement for which approval is now sought. (Decl. of Robert
Wasserman ¶ 23.) Moreover, plaintiff's counsel states plaintiff

1 However, the incentive award is not dispositive of
2 plaintiff's adequacy, and its justification can be further
3 explored at the final Fairness Hearing. See Alberto, 252 F.R.D.
4 at 662-63, 669 (certifying plaintiff as an adequate class
5 representative "pending the introduction at the final fairness
6 hearing of evidence in support of counsel's findings").
7 Accordingly, the court preliminarily finds that the proposed
8 incentive award does not render plaintiff an inadequate
9 representative of the class. On or before the date of the
10 Fairness Hearing, however, the parties shall present or be
11 prepared to present evidence of the named plaintiff's efforts
12 taken as class representative, such as her hours of service or an
13 itemized list of his activities, to justify the discrepancy
14 between her award and those of the unnamed plaintiffs.³

15 "Although there are no fixed standards by which [the
16 second question of Hanlon] can be assayed, considerations include
17 competency of counsel and . . . an assessment of the rationale
18 for not pursuing further litigation." Hanlon, 150 F.3d at 1021.
19 Here, plaintiff has provided evidence that class counsel has
20 substantial experience in prosecuting class actions, including
21 employment actions and wage-and-hour matters. (Decl. of Robert
22 Wasserman ¶¶ 25-28.) Class counsel decided to forgo further

23 has participated in discovery and traveled to attend a full-day
24 of mediation. (Id. ¶ 24.)

25 ³ The settlement also includes an individual settlement
26 payment to plaintiff. Separate and apart from the class claims,
27 plaintiff agreed to settle her individual and retaliation claims
28 against defendant. Plaintiff requests, and the court
preliminarily approves, a payment of \$15,000 in settlement of her
individual claims. (Decl. of Robert Wasserman Ex. 2 § G.)

1 litigation after engaging in "extensive formal and informal
2 investigation and discovery," "months of [] negotiation," and
3 assessment of the risks of further litigation including
4 "anticipate[d] challenges to both class certification and the
5 merits of the Action" and costs. (Id. ¶¶ 2-8, 12.) Accordingly,
6 the court finds that plaintiff and plaintiff's counsel are
7 adequate representatives of the class, and therefore plaintiff
8 has satisfied all of the requirements set forth in Rule 23(a).

9 2. Rule 23(b)

10 An action that meets all the prerequisites of Rule
11 23(a) may be certified as a class action only if it also
12 satisfies the requirements of one of the three subdivisions of
13 Rule 23(b). Leyva v. Medline Indus. Inc., 716 F.3d 510, 512 (9th
14 Cir. 2013). Plaintiff seeks certification under Rule 23(b) (3),
15 which provides that a class action may be maintained only if (1)
16 "the court finds that questions of law or fact common to class
17 members predominate over questions affecting only individual
18 members" and (2) "that a class action is superior to other
19 available methods for fairly and efficiently adjudicating the
20 controversy." Fed. R. Civ. P. 23(b) (3).

21 a. Predominance

22 "Because Rule 23(a) (3) already considers commonality,
23 the focus of the Rule 23(b) (3) predominance inquiry is on the
24 balance between individual and common issues." Murillo, 266
25 F.R.D. at 476 (citing Hanlon, 150 F.3d at 1022); see also
26 Windsor, 521 U.S. at 623 ("The Rule 23(b) (3) predominance inquiry
27 tests whether proposed classes are sufficiently cohesive to
28 warrant adjudication by representation.").

1 As previously discussed, the claims of class members in
2 this case appear to raise similar, if not identical questions of
3 fact and law. Thus, the class claims demonstrate “[a] common
4 nucleus of facts and potential legal remedies dominates this
5 litigation.” Hanlon, 150 F.3d at 1022. Accordingly, the
6 “predominance” requirement has been satisfied.

7 b. Superiority

8 Rule 23(b)(3) also requires “that a class action is
9 superior to other available methods for fairly and efficiently
10 adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). It
11 sets forth four non-exhaustive factors in determining
12 “superiority”: (a) class members’ interests in individually
13 controlling the litigation; (b) the extent and nature of any
14 litigation concerning the controversy already begun by class
15 members; (c) the desirability of concentrating the litigation in
16 the particular forum; and (d) likely difficulties in managing a
17 class action. Id.

18 Here, each class member stands to receive approximately
19 \$175, depending upon the number of wage statements each
20 participating class member actually received during the class
21 period. Thus, class members’ interest in litigating this case is
22 likely low given that all of the members stand to recover
23 relatively little compared to the costs of individual litigation.
24 Additionally, the court is unaware of any reason why this forum
25 would be undesirable, and neither party alleges that managing
26 this class action would present undue difficulties.

27 Furthermore, separate litigation “would be expensive
28 and time-consuming and would create the danger of conflicting

1 decisions as to persons similarly situated.” See Lerwill v.
2 Inflight Motion Pictures, Inc., 582 F.2d 507, 512 (9th Cir.
3 1978). Accordingly, because there is no reasonable alternative
4 to a class action, plaintiffs have satisfied the “superiority”
5 requirement. See Local Joint Exec. Bd. v. Las Vegas Sands, Inc.,
6 244 F.3d 1152, 1161 (9th Cir. 2001) (explaining that “if a
7 comparative evaluation of other procedures reveals no other
8 realistic possibilities, this superiority portion of Rule
9 23(b) (3) has been satisfied.”).

10 3. Rule 23(c) (2) Notice Requirements

11 If the court certifies a class under Rule 23(b) (3), it
12 “must direct to class members the best notice that is practicable
13 under the circumstances, including individual notice to all
14 members who can be identified through reasonable effort.” Fed.
15 R. Civ. P. 23(c) (2) (B). Rule 23(c) (2) governs both the form and
16 content of a proposed notice. See Ravens v. Iftikar, 174 F.R.D.
17 651, 658 (N.D. Cal. 1997) (citing Eisen v. Carlisle & Jacquelin,
18 417 U.S. 156, 172-77 (1974)). Although that notice must be
19 “reasonably certain to inform the absent members of the plaintiff
20 class,” actual notice is not required. Silber v. Mabon, 18 F.3d
21 1449, 1454 (9th Cir. 1994) (citation omitted).

22 The parties agree that Atticus Administration, LLC
23 (“Atticus”) will serve as the claims administrator. (Decl. of
24 Robert Wasserman ¶ 18.) The parties settled on Atticus after
25 soliciting bids from Rust Consulting, Inc., CPT Group, Inc.,
26 Simpluris, Inc., and Atticus. (Id.)

27 Here, the parties agree that within fourteen calendar
28 days after preliminary approval, defendant will provide Atticus

1 in an accessible electronic format the name, last known address,
2 and social security number of each class member. (Settlement
3 Agreement § 48). Atticus will perform address updates and
4 verifications as necessary prior to the first meeting. (Id.)
5 Within fourteen calendar days after receipt of the class list by
6 defendant, Atticus shall send the class members, by first-class
7 mail, at their last known mailing address or other address
8 located by Atticus, the approved class notice. (Id. § 49).

9 The parties have also supplied a proposed "Notice of
10 Pendency of Class Action, Preliminary Approval of Settlement, and
11 Hearing for Final Approval." (Decl. of Robert Wasserman Ex. 2.)
12 The notice identifies the parties, explains the nature of the
13 proceedings, defines the class, provides the terms of the
14 settlement, and explains the procedure for objecting or opting
15 out of the class. (Decl. of Robert Wasserman Ex. B.) Therefore,
16 the content of the notice satisfies Rule 23(c)(2)(B). See Fed.
17 R. Civ. P. 23(c)(2)(B); see also Churchill Vill., L.L.C. v. Gen.
18 Elec., 361 F.3d 566, 575 (9th Cir. 2004) ("Notice is satisfactory
19 if it 'generally describes the terms of the settlement in
20 sufficient detail to alert those with adverse viewpoints to
21 investigate and to come forward and be heard.'" (quoting Mendoza
22 v. Tucson Sch. Dist. No. 1, 623 F.2d 1338, 1352 (9th Cir.
23 1980))).

24 B. Preliminary Settlement Approval

25 After determining that the proposed class satisfies the
26 requirements of Rule 23, the court must determine whether the
27 terms of the parties' settlement appear fair, adequate, and
28 reasonable. See Fed. R. Civ. P. 23(e)(2); Hanlon, 150 F.3d at

1 1026. This process requires the court to "balance a number of
2 factors," including:

3 the strength of the plaintiff's case; the risk,
4 expense, complexity, and likely duration of further
5 litigation; the risk of maintaining class action
6 status throughout the trial; the amount offered in
7 settlement; the extent of discovery completed and the
8 stage of the proceedings; the experience and views of
9 counsel; the presence of a governmental participant;
10 and the reaction of the class members to the proposed
11 settlement.

12 Hanlon, 150 F.3d at 1026. Many of these factors cannot be
13 considered until the final Fairness Hearing, so the court need
14 only conduct a preliminary review at this time to resolve any
15 "glaring deficiencies" in the settlement agreement before
16 authorizing notice to class members. Ontiveros v. Zamora, Civ.
17 No. 2:08-567 WBS DAD, 2014 WL 3057506, at *12 (E.D. Cal. July 7,
18 2014) (citing Murillo, 266 F.R.D. at 478).

19 1. Terms of the Settlement Agreement

20 The key terms of the Settlement Agreement can be
21 summarized as follows:

- 22 (1) **Settlement Class:** All current and former
23 California employees of Beverly Health and
24 Rehabilitation Services, Inc. who were issued one
25 or more wage statements from July 25, 2015,
26 through September 1, 2016. (Settlement Agreement
27 § 7.)
- 28 (2) **Notice:** Atticus, the claims administrator, shall
mail the class notice to the class members within
14 calendar days after receiving the Class List
from defendants. The class list will be provided
to Atticus in an accessible electronic format by

1 defendant and will contain the following
2 information from each class member: name, last
3 known mailing address, and social security number.
4 The notice shall be mailed by Atticus, by first-
5 class mail, to class members at their last known
6 mailing address. Atticus will perform address
7 updates and verifications as necessary prior to
8 the first mailing. If the mail is returned,
9 Atticus will perform additional follow-up and will
10 re-mail the class notice to an updated address (if
11 any) within five calendar days of receipt of the
12 returned mail. Within fourteen days after receipt
13 of the class list, or as otherwise directed by the
14 court, Atticus shall launch its information only
15 website. The website will contain the information
16 contained in the class notice and the Order of
17 preliminary approval, the motion for final
18 approval, the motion for attorney's fees, costs,
19 and service payment, and the Order of final
20 approval when each is filed with the court. (Id.
21 §§ 48-49.)

22 **(3) Calculation of Individual Settlement Payments:**

- 23 a. Step 1: The Gross Settlement Fund will be
24 deposited into the Qualified Settlement Fund.
- 25 b. Step 1: From the Gross Settlement Amount, the
26 following will be deducted:
- 27 i. The court-approved fees and costs of the
28 claims administrator;

- 1 ii. The court-approved payment to the Labor
- 2 Agency;
- 3 iii. The court-approved incentive payment to
- 4 the class representative; and
- 5 iv. The court-approved fees and costs of class
- 6 members.

7 c. Step 3: Each participating class member's

8 share of the Net Settlement Amount--the

9 remaining amount after all deductions--will

10 then be calculated as a percentage, the

11 numerator of which is the number of wage

12 statements he or she received between July 25,

13 2015 and September 1, 2016 (allocated points

14 for each wage statement), the denominator of

15 which is the total number of points allocated

16 for all Participating class members.

17 Participating class members who were also

18 parties to the Veurink Class Action Settlement

19 will not be allocated points for the wage

20 statements they received between July 25, 2015

21 and February 12, 2016. The total number of

22 wage statements issued and number of wage

23 statements issued to each participating class

24 member shall be determined using defendants'

25 records.

26 (4) **Opt-Out Procedure:** To opt-out of the settlement,

27 a class member must, within forty-five calendar

28 days from the date of mailing of the class notice,

1 submit their desire to opt-out in writing to
2 Atticus indicating his or her full name, current
3 home (or mailing address), and the last four
4 digits of his or her social security number as
5 well as written affirmation of the desire to opt-
6 out containing the following or substantially
7 similar language:

8 "I elect to opt-out of the Ahmed v. Beverly
9 Health and Rehabilitation Services, Inc., et
10 al. class action settlement. I understand
11 that by doing so, I will not be able to
12 participate in the settlement and will not
13 receive a share of the settlement proceeds."

14 (Id. § 40.)

- 15 (5) **Objections to Settlement:** Any class member who
16 wishes to object to the proposed settlement at the
17 final Approval Hearing must, within forty-five
18 calendar days from the date of mailing of the
19 class notice, submit their objection in writing to
20 Atticus. All objections and support papers must:
21 clearly identify the case name and number, include
22 the class member's full name, address, telephone
23 number, and the last four digits of his or her
24 social security number, concisely state the
25 grounds for their objection, whether they would
26 like to appear at the final Approval Hearing, and
27 be filed in writing with Atticus. Class members
28 who have filed a timely and proper objection may,

1 but are not required to, appear and present
2 argument at the final Approval Hearing in person
3 or through counsel. No class member may appear at
4 the final Approval Hearing to object to the terms
5 of the settlement unless he or she has filed a
6 timely objection that complies with the procedures
7 herein. Any attorney who will represent an
8 individual objecting to the settlement must file a
9 notice of appearance with the court and serve
10 counsel for all parties no later than forty-five
11 calendar days after the class notice if first
12 mailed. (Id.)

13 (6) **Settlement Amount:** Defendant will pay \$450,000 to
14 settle this case (referred to as the "Gross
15 Settlement Amount"). The Gross Settlement Amount
16 includes payments to participating class members,
17 the fees and costs of the claims administrator,
18 the service payment to plaintiff, and class
19 counsel's attorneys' fees and costs, as well as a
20 payment to the State of California. (Settlement
21 Agreement §§ 34-36; Notice § 4.)

22 (7) **Attorneys' Fees, Costs, and Plaintiff's Incentive**
23 **Award:** Defendant has agreed to pay class counsel
24 one-third of the Gross Settlement Amount, or
25 \$150,000, and reimbursement of litigation costs up
26 to \$12,500. (Notice § 4.) Plaintiff will apply
27 to the court for a service payment to plaintiff in
28 an amount not to exceed \$4,500, or one percent of

1 the Gross Settlement Amount, in consideration for
2 her service as a participating class member. This
3 service payment is in addition to whatever
4 plaintiff is entitled to as a participating class
5 member. (Settlement Agreement § 38.)

6 (8) **Settlement Distribution:** After being reduced by
7 the fees and costs of the claims administrator,
8 the service payment to plaintiff, and class
9 counsel's attorneys' fees and costs, as well as a
10 payment to the State of California, the remaining
11 settlement fund will be distributed by the claims
12 administrator to each participating class member
13 in the form of a check. Any uncashed settlement
14 compensation from the settlement fund that remains
15 after the expiration of 180 days will be
16 transmitted by the claims administrator to the
17 State of California Unclaimed Property Fund, to be
18 held there in the name of and for the benefit of
19 such class members under California's escheatment
20 laws. (Settlement Agreement §§ 42, 44.)

21 (9) **Release:** Class members who participate in the
22 settlement agree to "release Defendants and the
23 Releases [] from any and all claims based upon
24 Defendants' alleged failure to furnish and/or
25 maintain accurate wage statements under Labor Code
26 section 226(a), or the California Labor Code
27 Private Attorneys General Act of 2004, Labor Code
28 section 2698 et. seq., based on any violation of

1 Labor Code section 226(a), whether known or
2 unknown, suspected or unsuspected, that existed or
3 came into existence between July 25, 2015 and
4 September 1, 2016. (Id. §§ 50-51.) Class Members
5 also agree to release defendants and releases from
6 any and all claims based upon defendants' alleged
7 failure to (i) furnish and/or maintain accurate
8 wage statements under Labor Code sections 226(a),
9 and (ii) to pay wages within seven days of the
10 close of each pay period in violation of Labor
11 Code section 204, between July 25, 2015 and
12 September 1, 2016. In addition, plaintiff agrees
13 to release defendants and releases from all
14 claims, demands, rights, liabilities and cause of
15 action of every nature and description whatsoever,
16 known or unknown, asserted or that could have been
17 asserted, for any violation of state and federal
18 law, arising out of, relating to, or in connection
19 with any act or omission by or on the part of
20 defendants and releases committed or omitted prior
21 to the execution of the settlement agreement
22 including a waiver of California Civil Code
23 section 1542. Plaintiff will receive an
24 additional \$15,000 as consideration for the above,
25 and for which she will execute a separate
26 individual settlement agreement. (Id. § 52.)

27 2. Preliminary Determination of Adequacy

28 At the preliminary stage, "the court need only

1 'determine whether the proposed settlement is within the range of
2 possible approval.'" Murillo, 266 F.R.D. at 479 (quoting
3 Gautreaux v. Pierce, 690 F.2d 616, 621 n.3 (7th Cir. 1982)).
4 This generally requires consideration of "whether the proposed
5 settlement discloses grounds to doubt its fairness or other
6 obvious deficiencies, such as unduly preferential treatment of
7 class representatives or segments of the class, or excessive
8 compensation of attorneys." Id. (quoting West v. Circle K
9 Stores, Inc., Civ. No. 04-438 WBS GGH, 2006 WL 1652598, at *11-12
10 (E.D. Cal. June 13, 2006)). Courts often begin by examining the
11 process that led to the settlement's terms to ensure that those
12 terms are "the result of vigorous, arms-length bargaining" and
13 then turn to the substantive terms of the agreement. See, e.g.,
14 West, 2006 WL 1652598, at *11-12; In re Tableware Antitrust
15 Litig., 484 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007)
16 ("[P]reliminary approval of a settlement has both a procedural
17 and a substantive component.").

18 a. Negotiation of the Settlement Agreement

19 Here, plaintiff's counsel states that the settlement
20 agreement is the result of formal and informal settlement
21 negotiations, including the voluntary exchange of extensive
22 information and documents related to claims in this case. (Pl.'s
23 P. & A at 3.) Counsel further states that the decision to settle
24 was informed by the time and expense that both sides would incur
25 in the course of further litigation, given the anticipation of a
26 vigorous and lengthy challenge to both class certification and
27 the merits of the action. (Pl.'s P. & A. at 15.) In light of
28 these considerations, the court sees no reason to second-guess

1 counsel's determination that settlement is in the best interest
2 of the class. See Fraley v. Facebook, Inc., 966 F. Supp. 2d 939,
3 942 (N.D. Cal. 2013) (holding that a settlement reached after
4 informed negotiations "is entitled to a degree of deference as
5 the private consensual decision of the parties" (citing Hanlon,
6 150 F.3d at 1027)).

7 b. Amount Recovered and Distribution

8 In determining whether a settlement agreement is
9 substantively fair to the class, the court must balance the value
10 of expected recovery against the value of the settlement offer.
11 See Tableware, 484 F. Supp. 2d at 1080. This inquiry may involve
12 consideration of the uncertainty class members would face if the
13 case were litigated to trial. See Ontiveros, 2014 WL 3057506, at
14 *14.

15 Here, class members may claim penalties under section
16 226(e) of approximately \$100 per wage statement. (Pl.'s P. & A.
17 at 14.) However, recovery is far from guaranteed and could only
18 occur after years of costly litigation. (Id.) Based upon
19 defendants' records, it is estimated that the average individual
20 settlement payment for each participating class member will be
21 approximately \$175. (Decl. of Robert Wasserman ¶ 15.) Here,
22 there is not a significant difference between the settlement
23 amount and the possible recovery under section 226(e). Moreover,
24 the value of recovery is significant in light of the "significant
25 amount of uncertainty" class members would face if the case were
26 litigated to trial. Murillo, 266 F.R.D. at 480.

27 Turning to the distribution of this amount, Atticus, is
28 an experienced claims administrator. (Declaration of Robert

1 Wasserman ¶ 18.) Class counsel indicates that Atticus's expected
2 fees are \$15,882. (Id.) These fees are consistent with those
3 awarded by other judges of this district in similar cases. See,
4 e.g., Adoma, 913 F.Supp.2d at 985 (approving a \$19,000 fee for
5 Simpluris, a claims administrator, to manage 1,725-member class);
6 Vasquez v. Coast Valley Roofing, Inc., 266 F.R.D. 482, 484 (E.D.
7 Cal. 2010) (Wanger, J.) (approving a \$25,000 fee for a settlement
8 administrator that managed 177 class members). Likewise, class
9 counsel's claims estimate of actual litigation costs of up to
10 \$12,500 do not appear unreasonable at this stage in the
11 litigation. (Pl.'s P. & A. at 20); See, e.g., Hartless v. Clorox
12 Co., 273 F.R.D. 630, 646 (S.D. Cal. 2011) (awarding \$111,002.22
13 in costs where defendant agreed to create a settlement fund of at
14 least \$7 million); Loretz v. Regal Stone, Ltd., 756 F. Supp. 2d
15 1203, 1218 (N.D. Cal. 2010) (awarding a total of over \$70,000 in
16 costs to two law firms acting as class counsel).

17 The parties also allocate \$4,500, or 1% of the Gross
18 Settlement Amount, to the Private Attorney General Act ("PAGA")
19 claims. Pursuant to PAGA, "civil penalties recovered by
20 aggrieved employees shall be distributed as follows: 75 percent
21 to the Labor and Workforce Development Agency for enforcement of
22 labor laws, . . . and 25 percent to the aggrieved employees."
23 Cal. Lab. Code § 2699. Here, of the \$4,5000 allocated to the
24 PAGA claims, 75% or \$3,375 will be paid to the Labor Agency, and
25 25% or \$1,125 will be returned to the Net Settlement Amount.

26 (Settlement Agreement § 45.) This amount is in the range
27 approved by other courts in class actions with PAGA components.
28 See Munoz v. UPS Ground Freight, Inc., Civ. No. 07-970 MHP, 2009

1 WL 1626376, at *1 (N.D. Cal. June 9, 2009) (approving \$60,000 or
2 2% of the total settlement be sent to the California Labor Agency
3 pursuant to PAGA); Hopson v. Hanesbrands Inc., Civ. No. 08-844
4 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009) (approving
5 PAGA settlement of \$1,500 or .03%); Schiller v. David's Bridal,
6 Inc., Civ. No. 1:10-616-AWI, 2012 WL 2117001, at *2 (E.D. Cal.
7 June 11, 2012) (Oberto, J.) (approving \$7,500 to California Labor
8 Agency for payment of civil penalties where Maximum Settlement
9 Amount totaled \$518,245). Accordingly, the court finds such
10 amount is reasonable and sufficient under the circumstances.

11 The court therefore concludes that the substance of the
12 settlement is fair to class members and thereby "falls within the
13 range of possible approval." Tableware, 484 F. Supp. 2d at 1079.

14 3. Attorneys' Fees

15 If a negotiated class action settlement includes an
16 award of attorneys' fees, that fee award must be evaluated in the
17 overall context of the settlement. Knisley v. Network Assocs.,
18 312 F.3d 1123, 1126 (9th Cir. 2002); Monterrubio, 291 F.R.D. at
19 455. The court "ha[s] an independent obligation to ensure that
20 the award, like the settlement itself, is reasonable, even if the
21 parties have already agreed to an amount." In re Bluetooth
22 Headset Prods. Liab. Litig., 654 F.3d 935, 941 (9th Cir. 2011).

23 Here, class counsel seeks fees under the common fund
24 doctrine. "Under the 'common fund' doctrine, 'a litigant or a
25 lawyer who recovers a common fund for the benefit of persons
26 other than himself or his client is entitled to a reasonable
27 attorney's fee from the fund as a whole." Staton, 327 F.3d at
28 969 (quoting Boeing Co. v. Van Gemert, 444 U.S. 472, 478 (1980)).

1 The Ninth Circuit has approved two methods of assigning
2 attorneys' fees in common fund cases: the "percentage of the
3 fund" method and the "lodestar" method. Vizcaino v. Microsoft
4 Corp., 290 F.3d 1043, 1047 (9th Cir. 2002) (citing In re Wash.
5 Pub. Power Supply Sys. Litig., 19 F.3d 1291, 1295-96 (9th Cir.
6 1994)). Under the percentage method, the court may award class
7 counsel a percentage of the common fund recovered for the class.
8 Id. The percentage method is particularly appropriate in common
9 fund cases, where "the benefit to the class is easily
10 quantified." Bluetooth, 654 F.3d at 942. The Ninth Circuit has
11 approved a "benchmark" percentage of twenty-five percent, and
12 courts may adjust this figure upwards or downwards if the record
13 shows "'special circumstances' justifying a departure." Id.
14 (quoting Six (6) Mexican Workers v. Ariz. Citrus Growers, 904
15 F.2d 1301, 1311 (9th Cir. 1990)).

16 The settlement agreement provides that class counsel
17 will apply to the court for a fee in an amount not to exceed
18 \$150,000, or one-third, of the Gross Settlement Account.
19 (Settlement Agreement § 39.) The fees are to be paid from the
20 Gross Settlement Account. (Id.) The parties agree that the
21 settlement agreement is not contingent upon court approval of the
22 full amount of the requested attorneys' fees and that a court
23 order granting a lesser fee will not invalidate the settlement
24 agreement. (Id.) Courts have approved payments of attorneys'
25 fees in class actions for as much as one-third to forty percent
26 of the common fund in similar actions. Wren v. RGIS Inventory
27 Specialists, Civ. No. 06-5778 JCS, 2011 WL 1230826, at *29 (N.D.
28 Cal. Apr. 1, 2011) (finding attorneys' fees amounting to just

1 under 42% of the settlement amount appropriate and reasonable);
2 Bond v. Ferguson Enters., Inc., Civ. No. 1:09-1662 OWW MJS, 2011
3 WL 2648879, at *9 (E.D. Cal. June 30, 2011) (“[T]he exact
4 percentage [of attorneys’ fees] varies depending on the facts of
5 the case, and in most common fund cases, the award exceeds [the
6 25%] benchmark.”); Castillo v. ADT, LLC, Civ. No. 2:15-383 WBS
7 DB, 2017 WL 363108, at *7 (E.D. Cal. Jan. 25, 2017) (finding
8 attorneys’ fees amounting to 33% reasonable).

9 Accordingly, the court will preliminarily approve the
10 fee award on the understanding that plaintiff’s counsel must
11 demonstrate, on or before the date of the final Fairness Hearing,
12 that the proposed award is reasonable in light of the court’s
13 concerns. In the event that counsel is unable to do so, the
14 court will be forced to reduce fees to a reasonable amount or to
15 deny final approval of this settlement. See Vizcaino, 290 F.3d
16 at 1047; Alberto, 252 F.R.D. at 667-68.

17 IT IS THEREFORE ORDERED that plaintiff’s motion for
18 preliminary certification of a conditional settlement class and
19 preliminary approval of the class action settlement (Docket No.
20 34) be, and the same hereby is, GRANTED.

21 IT IS FURTHER ORDERED THAT:

22 (1) Defendant and the claims administrator shall
23 notify class members of the settlement in the manner specified in
24 the settlement agreement (Docket 34-2 Ex. 1);

25 (2) Class members who wish to opt-out of the settlement
26 must submit such opt-out in writing to the claims administrator in
27 accordance with the procedures set forth in the settlement
28 agreement and class notice, postmarked no later than forty-five

1 calendar days after the mailing of the class notice;

2 (3) Any class member who wishes to object to the
3 settlement must submit such objection in writing to the claims
4 administrator in accordance with the procedures set forth in the
5 settlement agreement and class notice, postmarked no later than
6 forty-five calendar days after the mailing of the class notice;

7 (4) Class members who have not complied with the
8 procedures set forth in the settlement agreement and class notice
9 shall not be permitted to speak at the final Approval Hearing;

10 (5) Subject to further consideration by the court at
11 the time of the final Approval Hearing, the proposed service
12 payment of \$4,500, or 1% of the gross settlement amount, for
13 plaintiff Henna Ahmed, in consideration of her services as class
14 representative, is preliminarily approved;

15 (6) Subject to further consideration by the court at
16 the time of the final Approval Hearing, the class counsel's
17 request of attorneys' fees in the amount of \$150,000 service or
18 one-third of the gross settlement amount, and declared costs of
19 up to \$12,500, are preliminary approved;

20 (7) Subject to further consideration by the court at
21 the time of the final Approval Hearing, the court preliminarily
22 approves, pursuant to California Labor Code section 2699(1)(2),
23 the parties' allocation of \$4,500 to settlement of claims under
24 the California Labor Code Private Attorneys General Act of 2004;

25 (8) the following class be provisionally certified for
26 the purpose of the settlement: all current and former California
27 employees of Beverly Health and Rehabilitation Services, Inc. who
28 were issued one or more wage statements from July 25, 2015,

1 through September 1, 2016;

2 (9) Plaintiff Henna Ahmed is conditionally certified as
3 the class representative to implement the parties' settlement in
4 accordance with the settlement agreement. The law firm of Mayall
5 Hurley P.C., by and through Lead Counsel Robert J. Wasserman,
6 William J. Gorham, Nicholas J. Scardigli, and Vladimir J. Kozina,
7 is her, is conditionally appointed as class counsel. Plaintiffs
8 and Mayall Hurley P.C. must fairly and adequately protect the
9 class's interests;

10 (10) The parties agree that Atticus Administration, LLC
11 will serve as the settlement administrator. The court also
12 approves declared fees and costs of administering the settlement
13 of up to \$16,000;

14 (11) If the settlement agreement terminates for any
15 reason, the following will occur: (a) class certification will be
16 automatically vacated; (b) plaintiff will stop functioning as
17 class representative; and (c) this action will revert to its
18 previous status in all respects as it existed immediately before
19 the parties executed the settlement agreement;

20 (12) All discovery and pretrial proceedings and
21 deadlines are stayed and suspended until further notice from the
22 court, except for such actions as are necessary to implement the
23 settlement agreement and this Order;

24 (13) The final Approval Hearing is set for May 14, 2018
25 at 1:30 p.m., in Courtroom No. 5, to determine whether the
26 settlement agreement should be finally approved as fair,
27 reasonable, and adequate. The court will also consider
28 plaintiff's motion for attorneys' fees, costs, and service

1 payment;

2 (14) The court approves the establishment of a
3 Qualified Settlement Fund pursuant to Treas. Reg. § 1.468B-1 to
4 receive, hold, and distribute the gross settlement amount in
5 accordance with the terms of the settlement agreement and this
6 Order, and that the qualified settlement agreement and the claims
7 administrator will be subject to the continuing jurisdiction of
8 this court;

9 (15) Based on the date this Order is signed and the
10 date of the final Approval Hearing, the following are the certain
11 associated dates in this settlement:

12 (a) Defendant shall provide the contact
13 information of the class members ("class list") to
14 the claims administrator within 14 calendar days
15 of the entry of this Order;

16 (b) The claims administrator shall launch its
17 information only website within 14 calendar days
18 after receiving the class list;

19 (c) The last day for class members to file a
20 claim, request exclusion, or object to the
21 settlement is 45 calendar days after the mailing
22 of the notice;

23 (16) Plaintiff shall file a motion for attorneys' fees
24 no later than 35 calendar days after the mailing of the class
25 notice.

26 Dated: February 6, 2018



27 **WILLIAM B. SHUBB**
28 **UNITED STATES DISTRICT JUDGE**