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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARCUS BETORINA, et al.,
Plaintiffs,
v.
RANDSTAD US, L.P.,
Defendant.

Case No. [15-cv-03646-EMC](#)

**ORDER GRANTING PLAINTIFFS’
MOTION FOR PRELIMINARY
APPROVAL OF CLASS SETTLEMENT**

Docket No. 31

I. INTRODUCTION

Plaintiffs Marcus Betorina, Joseph Diaz, and Fred Bell filed this lawsuit against Defendant Randstad US, L.P., generally alleging that that Defendant’s security guard employees were not properly compensated for wages as required under California law. Docket No. 1-3 Ex. C. Pending before the Court is Plaintiffs’ motion for preliminary approval of class settlement. Docket No. 31. Defendant filed a statement of non-opposition regarding the motion for preliminary approval. Docket No. 34. For the reasons stated at the hearing and as set forth below, the Court **GRANTS** Plaintiffs’ motion for preliminary approval.

II. BACKGROUND

A. Litigation History

Plaintiffs filed this lawsuit against Defendant in the Superior Court of the State of California for the County of Alameda on February 13, 2015. Docket No. 1-3 Ex. C. The original complaint generally alleged that Defendant’s security guard employees were not properly compensated for wages as required under California law. On April 16, 2015, Plaintiffs filed the First Amended Complaint, which added a claim under the California Private Attorneys General Act. Docket No. 1-1 Ex. A; Docket No. 31-1 (Declaration of Kyle Nordrehaug in Support of

1 Motion) at ¶ 7.

2 The First Amended Complaint alleges five causes of action: unfair competition in violation
3 of California Business and Professions Code §§ 17200, *et seq.*; failure to provide accurate
4 itemized statements in violation of California Labor Code § 226; failure to reimburse employees
5 for required expenses in violation of California Labor Code § 2802; failure to timely pay wages
6 when due in violation of California Labor Code § 203; and violation of the Private Attorneys
7 General Act, Labor Code §§ 2698, *et seq.* Docket No. 1-1 Ex. A.

8 On August 7, 2015, Defendant answered the First Amended Complaint. Docket No. 1-2
9 Ex. B. The action was then removed by Defendant to the U.S. District Court for the Northern
10 District of California on August 10, 2015. Docket No. 1; Docket No. 31-1 (Declaration of Kyle
11 Nordrehaug in Support of Motion) at ¶ 8.

12 On May 5, 2016, this Court held an initial Case Management Conference. Docket No. 19.
13 On August 6, 2016, Parties participated in a good faith, arms-length mediation presided over by
14 Jeffrey Ross, a respected and experienced mediator of wage and hour class actions. Docket No.
15 31-1 (Declaration of Kyle Nordrehaug in Support of Motion) at ¶ 12. With the assistance of the
16 mediator, the Parties agreed to settle the action and signed a Memorandum of Understanding. *Id.*
17 Parties then negotiated and prepared the Settlement Agreement which sets forth the final terms of
18 the Settlement. *Id.*

19 B. Settlement Agreement

20 1. Second Amended Complaint

21 Attached to the Settlement Agreement as Exhibit B is Plaintiffs' Second Amended
22 Complaint, which the Settlement Agreement explains to have "occurred during the Settlement
23 Period." Docket No. 31-1 Ex. 1 (Settlement Agreement) at ¶ 48. The Second Amended
24 Complaint differs from the First Amended Complaint in that it additionally asserts the following
25 claims based on Defendant's uniform policy of failing to pay overtime compensation to non-
26 exempt employees: failure to pay overtime wages in violation of California Labor Code §§510, *et*
27 *seq.*; and failure to pay overtime compensation in violation of the Fair Labor Standards Act
28 (FLSA), 29 U.S.C. §§201, *et seq.* Docket No. 31-1 Ex. 1 Ex. B (Second Amended Complaint).

1 Because Parties have based their Settlement Agreement on the Second Amended Complaint, the
2 Court treats the Second Amended Complaint as the operative complaint for settlement purposes.

3 2. Settlement Class

4 Parties agreed to the following definition of the Settlement Class: “all individuals who
5 worked for Defendant Randstad US, L.P. as Security Guards who were placed out of Randstad
6 business unit 14023, and classified as non-exempt employees, from February 13, 2011 to August
7 8, 2016.” Docket No. 31-1 Ex. 1 (Settlement Agreement) at ¶ 12.

8 3. Payment Terms

9 Per Parties’ agreement, Defendant pays \$350,000 (“Gross Settlement Fund”) as
10 consideration for the Settlement Agreement. Docket No. 31-1 Ex. 1 (Settlement Agreement) at ¶
11 29. This amount includes:

- 12 (i) all payments made to Qualified Claimants; (ii) service awards
13 (i.e., service payments) to the Class Representatives (of up to
14 \$10,000 each for Plaintiffs Betorina, Bell, and Diaz); (iii) \$3,500 for
15 the release of any PAGA claims that could be and/or were asserted;
16 (iv) Settlement Administration Expenses; (v) Class Counsel’s
17 approved attorneys’ fees (of no more than 87,500); (vi) Class
18 Counsel’s approved litigation costs (of no more than \$10,000); and
19 (vii) all payroll taxes other than Defendant’s portion of payroll taxes
20 which shall remain the responsibility of Defendant.

21 *Id.* at ¶ 29. Defendant shall fully fund the Gross Settlement to the Settlement Administrator within
22 fifteen days of the Effective Date, the date upon which final approval of the Settlement Agreement
23 is granted by the Court and the Court’s judgment approving the Settlement becomes final. *Id.* at ¶
24 6.

25 4. Releases

26 In exchange for the payments, the Settlement Class releases the following claims:

- 27 any and all claims, rights, demands, charges, complaint, causes of
28 action, obligations or liability of any and every kind that were
alleged in any version of any complaint filed in the Action or in the
Second Amended Complaint which occurred during the Settlement
Period, and expressly excluding all other claims, including claims
for wrongful termination, unemployment insurance, disability,
workers’ compensation, and claims outside the Settlement Period,
except that Settlement Class Members who do not submit signed
Claim Forms will not release their claims under the Fair Labor
Standards Act (“Released Class Claims”).

1 *Id.* at ¶ 48.

2 5. Procedures for Claims and Settlement

3 The Net Settlement Fund is the Gross Settlement Fund minus distributions for attorneys’
4 fees and costs, expenses of the Settlement Administrator, service awards, and the payment to the
5 California Labor & Workforce Development Agency for release of claims under the Private
6 Attorneys General Act under Labor Code §§ 2699, *et seq.* *Id.* at ¶ 9. Each member of the
7 Settlement Class who submits a valid Claim Form (“Qualified Claimant”) shall be entitled to
8 receive a pro rata portion of the Net Settlement Fund, calculated based on the number of
9 workweeks in which the member worked during the Settlement Period, divided by the total
10 number of workweeks worked by all Settlement Class Members during the said period
11 (“Individual Settlement Share”). *Id.* at ¶ 29(c). The entire Net Settlement Fund will be distributed
12 to Qualified Claimants, and there will be no reversion of the Net Settlement Fund to Defendant.
13 *Id.* at ¶ 10. In order to receive their Individual Settlement Share, Settlement Class Members must
14 submit a signed and completed Claim Form to the Settlement Administrator postmarked no later
15 than forty-five days after the Class Notice is mailed (or not more than twenty calendar days after
16 the Class Notice is re-mailed). *Id.* at ¶ 43.

17 6. Opt-Ins, Opt-Outs, and Objections

18 Unless a Class Member opts out of the Settlement, he or she will be bound by the terms of
19 the Settlement Agreement, although in order to release FLSA claims and become a member of the
20 FLSA Class, a Class Member must affirmatively sign the FLSA Opt-In. As described in the Class
21 Notice, in order to opt out, a Class Member must submit to the Settlement Administrator, by First
22 Class Mail, a written, signed, and dated request to opt out, postmarked no later than forty-five
23 days after the Class Notice is mailed (or not more than twenty calendar days after the date the
24 Class Notice is re-mailed). *Id.* at ¶ 39. Settlement Class Members who do not opt out may object
25 to the Settlement by submitting an objection to the Court within forty-five calendar days after the
26 Class Notice is sent (or not more than twenty calendar days after the date the Class Notice is re-
27 mailed). *Id.* at ¶ 41.

28

1 **III. DISCUSSION**

2 A. Legal Standard

3 Federal Rule of Civil Procedure 23(e) provides that “[t]he claims, issues, or defenses of a
4 certified class may be settled, voluntarily dismissed, or compromised only with the court’s
5 approval.” Fed. R. Civ. P. 23(e). It further provides that, “[i]f the proposal would bind class
6 members, the court may approve it only after a hearing and on finding that it is fair, reasonable,
7 and adequate.” Fed. R. Civ. P. 23(e)(2). When parties reach a settlement agreement prior to class
8 certification, as here, the court has an obligation to “peruse the proposed compromise to ratify
9 both the propriety of the certification and the fairness of the settlement.” *Staton v. Boeing Co.*,
10 327 F.3d 938, 952 (9th Cir. 2003).

11 Thus, this Court engages in a two-step inquiry. First, the Court assesses whether a class
12 exists with respect to both the Settlement Class and the FLSA Class. *See id.* (citing *Amchem*
13 *Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997)). Second, the Court “determine[s] whether the
14 proposed settlement is fundamentally fair, adequate, and reasonable.” *Id.* (citing *Hanlon v.*
15 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)).

16 B. Certification of the Settlement Class

17 1. Legal Standard

18 The Court must determine whether the Settlement Class meets the requirements for class
19 certification under Federal Rule of Civil Procedure 23 before determining the fairness of the
20 Settlement Agreement. *See Hanlon*, 150 F.3d at 1019.

21 Parties seeking class certification bear the burden of demonstrating the elements of Rule
22 23(a) are satisfied and “must affirmatively demonstrate . . . compliance with the Rule.” *Wal-Mart*
23 *Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011). If an action meets the prerequisites of Rule
24 23(a), the court must consider whether the class is maintainable under one or more of the three
25 alternatives set forth in Rule 23(b). *Narouz v. Charter Communs., LLC*, 591 F.3d 1261, 1266 (9th
26 Cir. 2010).

27 2. Rule 23(a) Requirements

28 The prerequisites of Rule 23(a) “effectively limit the class claims to those fairly

1 encompassed by the named plaintiff's claims." *General Telephone Co. of the Southwest v.*
2 *Falcon*, 457 U.S. 147, 155-56 (1982) (citing *General Telephone Co. v. EEOC*, 446 U.S. 318, 330
3 (1980)). Rule 23(a) requires:

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

10 *Id.* These prerequisites are generally referred to as numerosity, commonality, typicality, and
11 adequacy of representation. *Falcon*, 457 U.S. at 156.

12 a. Numerosity

13 The numerosity requirement is satisfied where "the class is so numerous that joinder of all
14 members is impracticable." Fed. R. Civ. P. 23(a)(1). Generally, 40 or more members will satisfy
15 the numerosity requirement. *Collins v. Cargill Mean Solutions Corp.*, 274 F.R.D. 294, 300 (E.D.
16 Cal. 2011); *Consolidated Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir.1995). The
17 Court finds that numerosity is met in this case because the proposed Class would be composed of
18 81 Class Members, Docket No. 31-1 (Declaration of Kyle Nordrehaug in Support of Motion) at ¶
19 25, or 65 Class Members as updated by Plaintiffs' Counsel during the March 29, 2017 hearing
20 ("hearing").

21 b. Commonality

22 A class has sufficient commonality "if there are questions of fact and law which are
23 common to the class." Fed. R. Civ. P. 23(a) (2). All questions of fact and law need not be
24 common to satisfy the rule. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998).
25 However, "[c]ommonality requires the plaintiff to demonstrate that the class members have
26 suffered the same injury" *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011)
27 (citing *General Telephone Co. of Southwest v. Falcon*, 457 U.S. 147, 157 (1982)). "This does not
28 mean merely that they have all suffered a violation of the same provision of law"; rather, "[t]heir
claims must depend upon a common contention" the determination of the truth or falsity of which
"will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-*

1 *Mart*, 131 S. Ct. at 2551.

2 Here, Plaintiffs allege uniform policies regarding meal and rest periods, reimbursement for
3 travel expenses, and overtime pay. The Court finds that these allegations give rise to common
4 questions of law and fact and thus that the commonality requirement is satisfied.

5 c. Typicality

6 The typicality requirement is met if “the claims or defenses of the representative parties are
7 typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). Typicality requires that a
8 class representative “possess the same interest and suffer the same injury” as the putative class.
9 *Falcon*, 457 U.S. at 156. Representative claims need only be “reasonably co-extensive with those
10 of absent class members; they need not be substantially identical.” *See Hanlon*, 150 F.3d at 1020.

11 The Court finds that the typicality requirement is satisfied. Class Representatives, *i.e.*,
12 Plaintiffs Betorina, Joseph Diaz, and Fred Bell, possess the same interest as the putative Class
13 because they were employed by Defendant as a non-exempt security guard employee and thus
14 were entitled to all legally required meal and rest periods, reimbursement of business expenses,
15 and overtime wages. Class Representatives also suffered the same injury as the putative Class:
16 they were denied the legally required meal and rest periods and overtime wages and incurred
17 unreimbursed business expenses, as a result of Defendant’s uniform practice applicable to non-
18 exempt security guard employees.

19 d. Adequacy

20 The adequacy requirement is satisfied where “the representative parties will fairly and
21 adequately protect the interest of the class.” Fed. R. Civ. P. 23(a)(4). Courts are to inquire (1)
22 whether the named plaintiffs and counsel have any conflicts of interest with the rest of the
23 potential class members and (2) whether the named plaintiff and counsel will prosecute the action
24 vigorously for the class as a whole. *See Hanlon*, 150 F.3d at 1020. Here, “there is no evidence of
25 any conflicts of interest” between Plaintiffs and their Counsel and the rest of the Class. *Viceral v.*
26 *Mistras Grp., Inc.*, No. 15-CV-02198-EMC, 2016 WL 5907869, at *4 (N.D. Cal. Oct. 11, 2016).

27 Rather, Plaintiffs claim:

28

1 Plaintiffs are well aware of their duties as the representatives of the
2 class and have actively participated in the prosecution of this case to
3 date. Plaintiffs effectively communicated with Class Counsel,
4 providing documents to Class Counsel, appearing for their
depositions and participated extensively in the investigation of the
action. The personal involvement of the Plaintiffs was essential to
the prosecution of the action and the monetary settlement reached.

5 Docket No. 31 at 18 (citing Docket No. 31-1 (Declaration of Kyle Nordrehaug in Support of
6 Motion) at ¶ 25). This claim is undisputed by Defendant. Docket No. 34. In addition, Plaintiffs’
7 claims are aligned with those of Class Members: to maximize the monetary relief under the same
8 set of facts and legal theories. There is no contention that named Plaintiffs are subject to unique,
9 burdensome defenses that will consume the litigation. Furthermore, Plaintiffs, undisputedly, claim
10 to have “retained competent counsel with extensive experience in class actions. Class Counsel has
11 extensive experience in class action litigation in California and throughout the country. Class
12 Counsel has been involved as class counsel in more than two hundred (200) class action matters,
13 including many wage and hour class actions.” Docket No. 31 at 18 (citing Resume, attached as
14 Exhibit 2 to the Declaration of Kyle Nordrehaug at ¶ 26).

15 3. Rule 23(b) Requirements

16 As noted above, once the requirements of Rule 23(a) are satisfied, a class may only be
17 certified if it is maintainable under Rule 23(b). Fed. R. Civ. P. 23(b); see also *Narouz v. Charter*
18 *Communs., LLC*, 591 F.3d 1261, 1266 (9th Cir. 2010). Plaintiffs have moved for certification of
19 the Class under Rule 23(b)(3). In order to maintain a class action under Rule 23(b)(3), the Court
20 must find that “questions of law or fact common to class members predominate over any questions
21 affecting only individual members, and that a class action is superior to other available methods
22 for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). As to
23 superiority, when “[c]onfronted with a request for settlement-only class certification, a district
24 court need not inquire whether the case, if tried, would present intractable management problems,
25 see Fed. R. Civ. P. 23(b)(3)(D), for the proposal is that there be no trial.” *Amchem Prods. Inc. v.*
26 *Windsor*, 521 U.S. 591, 620 (1997). Thus, “any manageability problems that may have existed are
27 eliminated by the settlement.” *Ruch v. AM Retail Grp., Inc.*, 2016 WL 1161453, at *10 (N.D. Cal.
28 Mar. 24, 2016).

1 First, the Court finds that predominance is satisfied prima facie because all of Plaintiffs’
2 claims arise from allegations of Defendant’s uniform practice and thus liability can be determined
3 on a classwide basis. While Defendant argues that its express policy in fact complies with the
4 labor laws, Plaintiffs allege there is a classwide practice violative of labor laws. While there is a
5 risk of individual variability as to such proof (as discussed below), there is a sufficient claim of
6 predominance to satisfy Rule 23(b). The fact that the calculated damages among individual Class
7 Members diverge does not defeat certification. *See Yokoyama v. Midland Nat. Life Ins. Co.*, 594
8 F.3d 1087, 1094 (9th Cir. 2010) (“[D]amage calculations alone cannot defeat certification
9 The amount of damages is invariably an individual question and does not defeat class action
10 treatment.”).

11 Second, the Court agrees that a class action is superior to other methods for adjudicating
12 the controversy because individual actions would involve relatively small claims for damages and
13 thus “would prove uneconomic for potential plaintiffs” because “litigation costs would dwarf
14 potential recovery.” *Hanlon*, 150 F.3d at 1022.

15 Thus, the Court certifies the Settlement Class under Rule 23 for settlement purposes.

16 C. Certification of the FLSA Class

17 1. Legal Standard

18 The FLSA authorizes “opt-in” representative actions “where the complaining employees
19 are similarly situated.” *Gerlach v. Wells Fargo & Co.*, 2006 WL 824652, at *2 (N.D. Cal. Mar.
20 28, 2006) (citing 29 U.S.C. § 216(b)); *see generally Hoffman-LaRoche v. Sperling*, 493 U.S. 165
21 (1989). While “[n]either the FLSA nor the Ninth Circuit have defined ‘similarly situated,’” this
22 Court has understood it to be a more lenient standard than is applicable under Rule 23. *Harris v.*
23 *Vector Mktg. Corp.*, 716 F.Supp.2d 835, 837 (N.D. Cal. 2010). In managing an FLSA
24 representative action, “[f]or conditional certification at this notice stage, the court requires little
25 more than substantial allegations, supported by declarations or discovery, that ‘the putative class
26 members were together the victims of a single decision, policy, or plan.’” *Gerlach*, 2006 WL
27 824652 at *2 (quoting *Thiessen v. General Electric Capital Corp.*, 267 F.3d 1095 at 1102 (10th
28 Cir. 2001)).

1 2. Discussion

2 This Court certifies the FLSA Class for at least two reasons: First, the Court certifies the
3 Settlement Class, which is subject to a stricter standard than the FLSA Class; and, second, the
4 FLSA Class Members were together the victims of Defendant’s uniform policies and practices.

5 D. Preliminary Approval of the Class Settlement

6 1. Legal Standard

7 Under Federal Rule of Civil Procedure 23(e), “[t]he claims, issues, or defenses of a
8 certified class may be settled, voluntarily dismissed, or compromised only with the court’s
9 approval.” “The purpose of Rule 23(e) is to protect the unnamed members of the class from unjust
10 or unfair settlements affecting their rights.” *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1100 (9th
11 Cir. 2008). Thus, before a court approves a settlement, it must conclude that the settlement is
12 “fundamentally fair, adequate, and reasonable.” *In re Heritage Bond Litig.*, 546 F.3d 667, 674-75
13 (9th Cir. 2008). This inquiry requires that the Court balance factors such as “(1) the strength of
14 the plaintiffs’ case; (2) the risk, expense, complexity, and likely duration of further litigation; (3)
15 the risk of maintaining class action status throughout the trial; (4) the amount offered in
16 settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the
17 experience and views of counsel; (7) the presence of a governmental participant; and (8) the
18 reaction of the class members to the proposed settlement.” *Churchill Vill., L.L.C. v. Gen. Elec.*,
19 361 F.3d 566, 575 (9th Cir. 2004).

20 Prior to formal class certification, “[t]he dangers of collusion between class counsel and
21 the defendant, as well as the need for additional protections when the settlement is not negotiated
22 by a court designated class representative, weigh in favor of a more probing inquiry than may
23 normally be required under Rule 23(e).” *Hanlon*, 150 F.3d at 1026; *see also Churchill Vill.*, 361
24 F.3d at 575. The Ninth Circuit has therefore explained that “where . . . the settlement takes place
25 before formal class certification, settlement approval requires a ‘higher standard of fairness.’”
26 *Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012) (quoting *Hanlon*, 150 F.3d at 1026).
27 This more “exacting review” is warranted “to ensure that class representatives and their counsel do
28 not secure a disproportionate benefit at the expense of the unnamed plaintiffs who class counsel

1 had a duty to represent.” *Id.* (internal quotation marks omitted).

2 Here, Parties have agreed to the Settlement Agreement prior to class certification. Thus,
3 the Court applies the more exacting standard in determining whether the settlement is fair,
4 adequate, and reasonable.

5 For approval of class action settlements, district courts have interpreted Rule 23(e) to
6 require a two-step process: “the [c]ourt first determines whether class action settlement deserves
7 preliminary approval and then, after notice is given to class members, whether final approval is
8 warranted.” *In re High-Tech Emp. Antitrust Litig.*, 2014 WL 3917126, at *3 (N.D. Cal. Aug. 8,
9 2014) (internal quotation omitted). As a general matter, “there is relatively scant appellate
10 authority regarding the standard that a district court must apply in reviewing a settlement at the
11 preliminary approval stage.” *Id.* Although the Ninth Circuit has not specified what standard
12 should apply at the preliminary approval stage, “district courts often state or imply that scrutiny
13 should be more lax.” *Cotter v. Lyft*, 193 F.Supp.3d 1030, 1035-36 (N.D. Cal. June 23, 2016).
14 Recently, however, courts have begun to question this “lax review,” noting that such a review
15 “makes little practical sense, from anyone’s standpoint.” *Id.* at 1036. Rather, “by scrutinizing the
16 agreement carefully at the initial stage and identifying any flaws that can be identified, the court
17 allows the parties to decide how to respond to those flaws (whether by fixing them or opting not to
18 settle) before they waste a great deal of time and money in the notice and opt-out process.” *Id.* at
19 1037; *see also O’Connor v. Uber Technologies, Inc.*, No. 13-CV-03826-EMC, 2016 WL 4398271,
20 at *8 (N.D. Cal. Aug. 18, 2016).

21 This Court has previously explained that “[a]t the preliminary approval stage, the Court
22 may grant preliminary approval of a settlement and direct notice to the class if the settlement: (1)
23 appears to be the product of serious, informed, non-collusive negotiations; (2) has no obvious
24 deficiencies; (3) does not improperly grant preferential treatment to class representatives or
25 segments of the class; and (4) falls within the range of possible approval.” *Harris v. Vector Mktg.*
26 *Corp.*, No. C-08-5198 EMC, 2011 WL 1627973, at *7 (N.D. Cal. Apr. 29, 2011). However,
27 taking into account the more “exacting review” required for a settlement reached prior to class
28 certification, the Court, in applying the *Harris* test, fully and closely considers all of the applicable

1 factors enumerated in *Churchill Village*. See *Churchill Vill.*, 361 F.3d at 575.

2 2. Settlement Process

3 The first factor the Court examines is the means by which the parties arrived at settlement.
4 “An initial presumption of fairness is usually involved if the settlement is recommended by class
5 counsel after arm’s-length bargaining.” *Harris*, 2011 WL 1627973, at *8 (internal quotation
6 omitted); *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) (“We put a good deal
7 of stock in the product of an arms-length, non-collusive, negotiated resolution”).

8 Here, Parties participated in a good-faith, arms-length mediation presided over by Jeffrey
9 Ross, a respected and experienced mediator of wage and hour class actions. Docket No. 31-1
10 (Declaration of Kyle Nordrehaug in Support of Motion) at ¶ 12. “The assistance of an
11 experienced mediator in the settlement process confirms that the settlement is non-collusive.”
12 *Satchell v. Fed. Exp. Corp.*, 2007 WL 1114010, at *4 (N.D. Cal. Apr. 13, 2007).

13 The settlement is also recommended by Class Counsel. Specifically, Class Counsel
14 claims:

15 Class Counsel has conducted a thorough investigation into the facts
16 of the class action, including a review of relevant documents and
17 data and a diligent investigation of the Class Members’ claims
18 against Defendant. Class Counsel also retained an expert to prepare
19 a damage valuation in advance of mediation. Based on the foregoing
20 documents and data, and their own independent investigation and
21 evaluation, Class Counsel is of the opinion that the settlement with
22 Defendant for the consideration and on the terms set forth in the
23 Settlement Agreement is fair, reasonable, and adequate in light of all
24 known facts and circumstances, including the risk of significant
25 delay, defenses asserted by Defendant, and numerous potential
26 appellate issues.

27 Docket No. 31-1 (Declaration of Kyle Nordrehaug in Support of Motion) at ¶ 18.

28 Thus, the Court is satisfied that Parties reached the settlement in a procedurally sound
manner and that it was not the result of collusion or bad faith by Parties or Counsel.

3. The Presence of Obvious Deficiencies

The next factor the Court considers is whether there are obvious deficiencies in the
Settlement Agreement. There is no obvious deficiency in the Settlement Agreement.

1 4. Preferential Treatment

2 Under the third factor, the Court examines whether the Settlement Agreement provides
3 preferential treatment to any class member. With the exception of the service award to the Class
4 Representatives of up to \$10,000 each for Plaintiffs Bentorina, Bell, and Diaz, each of the
5 participating class members will receive a distribution based solely on the number of workweeks
6 in which the member worked during the Settlement Period. Docket No. 31-1 Ex. 1 (Settlement
7 Agreement) at ¶ 29. Thus, each of the Class Members will receive equal proportionate treatment.
8 The Court finds that there is no problem of preferential treatment.

9 5. Whether the Settlement Falls Within the Range of Possible Approval

10 Lastly, the Court determines whether the settlement falls within the range of possible
11 approval. In making the determination, the Court considers: (1) the strength of the plaintiffs’ case;
12 (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of
13 maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the
14 extent of discovery completed and the stage of the proceedings; (6) the experience and views of
15 counsel; (7) the presence of a governmental participant; and (8) the reaction of class members to
16 the proposed settlement. *Churchill Vill.*, 361 F.3d at 575.

17 a. Strength of the Plaintiffs’ case; the Risk, Expenses, Complexity, and Likely
18 Duration of Further Litigation; and the Risk of Maintaining Class Action
19 Status Throughout the Trial

20 Defendant “denies each and every one of the claims and contentions alleged” in this case.
21 Docket No. 31 at 9. Defendant has asserted numerous defenses, Docket No. 1-2 Ex. B, three¹ of
22 which Plaintiffs concede to be persuasive, Docket No. 31 at 12. The Court agrees that
23 Defendant’s argument undermines the strength of Plaintiffs’ case for the following reasons.

24 First, Defendant argues, undisputed by Plaintiffs during the hearing, that Defendant had an
25

26 ¹ These defenses are: Defendant’s assertion that the on-duty meal period was legal because the
27 “nature of the work” permitted the meal period waiver which were signed by the security officers
28 under Cal. Code Regs tit. 8, section 11090(11); Defendant’s argument that the requirement that
security guards remain on the premises did not create a rest break violations; Defendant’s
argument that any mileage claim was de minimis. Docket No. 31 at 12.

1 affirmative policy that gives meal and rest breaks to its employees in compliance with labor laws.
2 Thus, proving a practice inconsistent with such policy could be challenging, not only on the merits
3 but in demonstrating a sufficient pattern of practice as to maintain predominance for Rule 23(b)
4 purposes.

5 Second, Defendant argues, undisputed by Plaintiffs during the hearing, that the nature of
6 the work permitted waiver of meal breaks, at least for some Class Members. Section 11090,
7 entitled “Order Regulating Wages, Hours, and Working Conditions in the Transportation
8 Industry,” provides as follows:

9 **11. Meal Periods.**

10 (A) No employer shall employ any person for a work period of more
11 than five (5) hours without a meal period of not less than 30
12 minutes, except that when a work period of not more than six (6)
hours will complete the day’s work the meal period may be waived
by mutual consent of the employer and the employee.

13 Defendant explained during the hearing, undisputed by Plaintiffs, that some Class Members
14 worked shifts shorter than six hours, thereby qualifying for the exception under Section
15 11090(11)(A), and that many signed such waivers.

16 Third, Defendant obtained declarations from some Class Members asserting that they were
17 given meal and rest breaks.

18 If the case did not settle, there is a risk that Plaintiffs would be unable to maintain a
19 certified class given some of the potential individual issues discussed above. Docket No. 31-1
20 (Declaration of Kyle Nordrehaug in Support of Motion) at ¶ 22. Indeed, meal period waivers and
21 declarations from some Class Members support the existence of individual issues.

22 b. The Amount Offered in Settlement

23 With the assistance of a damage expert, DM&A, Plaintiffs calculated the alleged damages
24 they believed they would receive if they prevailed, as follows.

25 Using the hourly rate of \$12 per hour and 3,263 workweeks,
26 Plaintiffs calculated that the resulting damages for meal period
27 violations were \$195,780, and similarly, the rest period damages
28 were calculated to be \$195,780. This valuation assumed a meal and
rest period violation everyday, which is likely an overestimation.
The off-the-clock claim for pre-shift work was valued at no more
than \$58,734 even if all of the off-the-clock time was considered

1 overtime. The mileage claim for expense reimbursement was de
2 minimis. The settlement of \$350,000, before deductions, represents
3 77% of the calculated damages estimated by the Plaintiffs, assuming
4 these amounts could be proven in full at trial.

5 Docket No. 31-1 (Declaration of Kyle Nordrehaug in Support of Motion) at ¶ 20. Even taking into
6 account the possibility of the wage statement penalties, which were valued at approximately
7 \$66,000, and the waiting time penalties, which had a maximum value of approximately \$192,000,
8 the settlement of \$350,000 constitutes 49% of the calculated damages estimated by Plaintiffs.

9 The Court finds that the settlement amount is a significant percentage of the maximum
10 value of the claims at issue, particularly when viewed in the context of litigation risks. *See Glass*
11 *v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. Jan. 27, 2007) (approving a settlement
12 of an action claiming unpaid overtime wages where the settlement amount constituted
13 approximately 25% of the estimated overtime damages); *Dunleavy v. Nadler (In re Mego Fin.*
14 *Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000) (affirming the approval of a class settlement
15 which represented “roughly one-sixth of the potential recovery”).

16 c. The Extent of Discovery Completed and the Stage of the Proceedings

17 The Parties have performed significant discovery. First, Parties served more than 1,000
18 pages of documents for written discovery. Second, each Plaintiff was deposed by Defendant. *Id.*
19 Third, Parties have engaged in substantial investigation regarding the number of possible class
20 members. *Id.* at ¶ 10. Fourth, Class Counsel has thoroughly analyzed the value of Class
21 Members’ claims. *Id.* Fifth, Counsels indicated during the hearing that they have reviewed
22 Defendant’s meal and rest break policies, break waivers by some Class Members, and time records
23 and payroll data for each Class Members. Sixth, Counsels also indicated during the hearing that
24 the damage expert, DM&A, was provided with the time records and payroll data in calculating the
25 alleged damages.

26 Prior to the filing of the pending motion for preliminary approval, Parties participated in a
27 mediation presided over by Jeffrey Ross, a respected and experienced mediator of wage and hour
28 class actions, and were able to reach the basic terms of a class settlement. *Id.* at ¶ 12. Based on
the mediator’s proposal and Parties’ negotiations, Parties agreed to settle the case and signed a
Memorandum of Understanding. Parties then negotiated and prepared the Settlement Agreement,

1 which is the subject of the pending motion for preliminary approval.

2 d. The Experience and Views of Counsel

3 As discussed in Part C.2.a.iv, Class Counsel has extensive experience in class action
4 litigation in California and throughout the country, including many wage and hour class actions.
5 In addition, as discussed in Part C.3.b, Class Counsel is of the opinion that the Settlement
6 Agreement is fair, reasonable, and adequate.

7 e. The Presence of a Government Participant

8 Because there is no government participant in this case, this factor is inapplicable.

9 f. The Reaction of Class Members to the Proposed Settlement

10 Because the Class has not yet been notified of the settlement, the Court does not evaluate
11 the Class's reaction to the settlement, including the number and substance of any objections.

12 E. Class Notice

13 "For any class certified under Rule 23(b)(3), the court must direct to class members the
14 best notice that is practicable under the circumstances, including individual notice to all members
15 who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). "Notice is
16 satisfactory if it 'generally describes the terms of the settlement in sufficient detail to alert those
17 with adverse viewpoints to investigate and to come forward and be heard.'" *Churchill Vill.*, 361
18 F.3d at 575 (quoting *Mendoza v. Tuscon Sch. Dist. No. 1*, 623 F.2d 1338, 1352 (9th Cir. 1980)).

19 Here, Parties have agreed to mail the Class Notice and Claim Form to Class Members at
20 their last known address. If any notice packets are returned as undeliverable, the Settlement
21 Administrator will perform a routine skip trace procedure to obtain a current address and re-mail
22 the envelope to the updated address. The Court finds that this is the most efficient and effective
23 method for notifying Class Members. *Viceral v. Mistras Grp., Inc.*, No. 15-CV-02198-EMC,
24 2016 WL 5907869, at *10 (N.D. Cal. Oct. 11, 2016) (finding an analogous notification method to
25 be the most efficient and effective).

26 The Court has reviewed the content of the proposed Notice and concludes that it would
27 satisfy the requirements under Fed. R. Civ. P. 23(c)(2)(B) with the following proposed
28 amendments:

1 1. On page 1, add to the “SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS
2 IN THIS SETTLEMENT” that even if a Class Member objects, he or she can still submit a
3 Claim Form and receive a payment.

4 2. On page 1, instead of referring to the instant case as “the above-captioned action
5 pending in the United States District Court for the Northern District of California,” spell
6 out the case name.

7 3. On page 2, instead of stating “Plaintiffs filed the Second Amended Complaint,
8 which is the operative complaint,” state that Plaintiffs attached the Second Amended
9 Complaint to the pending motion for preliminary approval, which the Court recognized as
10 the operative complaint in the instant Order.

11 4. On page 2, state a dollar amount for the attorneys’ fees, in addition to stating “25%
12 of the Gross Settlement Fund.”

13 5. On page 5, under Question 9, add that a Class Member may make appearance
14 through an attorney and describe how a Class Member can make a timely written request
15 to speak at the Final Approval Hearing.

16 The Court has also reviewed the content of the proposed Claim Form. Class Members
17 must complete, sign, and mail the Claim Form in order to receive settlement payment, and the
18 Court approves this procedure, especially given the low number of Class Members. *See In re*
19 *ECotality, Inc. Sec. Litig.*, 2015 WL 12942494, at *2 (N.D. Cal. Mar. 6, 2015) (approving the
20 notice that requires class members to submit a Proof of Claim in order to get a payment). With
21 respect to the FLSA Class, the Court notes that the Claim Form has a separate page requesting
22 Class Members to affirmatively sign to opt into the FLSA settlement. The Court proposes the
23 following amendments to the Claim Form.

24 6. On the Claim Form, under “Release of FLSA Claims,” clarify that the release
25 applies only to existing claims, not to future claims.

26 7. On the Claim Form, under “Release of FLSA Claims,” add that Class Members
27 have an option not to opt in and describe the consequences of choosing that option.

28 8. On the Claim Form, under “FLSA Opt-In,” replace “consent to joint” with “consent

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to join” in order to correct the grammatical error.

IV. CONCLUSION

For the foregoing reasons, the Court **GRANTS** preliminary approval of Parties’ proposed Settlement Agreement. As discussed above, the Court also **GRANTS** provisional certification of the Class for settlement purposes and **ORDERS** Parties to file an amended Class Notice reflecting changes listed above within seven (7) days of the filing of this Order.

The Court hereby authorizes the retention of KCC/Gilardi & Co. as the Settlement Administrator for the purpose of the settlement with reasonable administration expenses not to exceed \$19,000.

The Court hereby conditionally appoints Norman Blumenthal, Kyle Nordrehaug, and Aparajit Bhowmik of Blumenthal, Nordrehaug & Bhowmik as Class Counsel; and Plaintiffs as Class Representatives for the Settlement Class.

This order disposes of Docket No. 31.

IT IS SO ORDERED.

Dated: April 6, 2017



EDWARD M. CHEN
United States District Judge