

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

JANE ROE,
Plaintiff,

v.

JOSE TORRES L.D. LATIN CLUB BAR,
INC,
Defendant.

Case No. 19-cv-06088-LB

PRELIMINARY APPROVAL ORDER
Re: ECF No. 17

INTRODUCTION

This is a wage-and-hour and employee-misclassification case. It is a putative collective action under the Federal Labor Standards Act (“FLSA”) 29 U.S.C. § 201 *et seq.*, and a putative class action under Federal Rule of Civil Procedure 23.¹ The plaintiffs, current and former exotic dancers, claim that their employer, defendant Jose Torres L.D. Latin Club Bar, Inc, d/b/a Hanky Panky Club, misclassified them as independent contractors under the FLSA and California law and so failed to pay them requisite compensation. The parties entered into a settlement agreement, and the plaintiffs moved for preliminary approval of the proposed settlement. The court grants the unopposed motion.

¹ Second Am. Compl. (“SAC”), Ex A to Notice of Removal – ECF No. 1-1 at 18–39 (¶¶ 63–187). Citations refer to material in the Electronic Case File (“ECF”); pinpoint citations are to the ECF-generated page numbers at the top of documents.

1 **STATEMENT**

2 **1. The Lawsuit**

3 On December 4, 2017, Plaintiff Jane Roe filed a class-action complaint in the San Mateo
4 County Superior Court asserting wage-and-hour claims on behalf of herself and similarly situated
5 individuals who, during the class period, worked for the defendant as exotic dancers.² On February
6 16, 2018, she filed an amended complaint adding a claim under California’s Private Attorney
7 General Act (“PAGA”).³ In December 2018, the parties settled the case after a mediation.⁴ The
8 state court denied preliminary approval of that settlement.⁵ The plaintiff filed a second amended
9 complaint (“SAC”) — which is the operative complaint — in September 2019 that added claims
10 under the Redwood City Minimum Wage Ordinance and the FLSA.⁶ The complaint has 11 claims:
11 (1) failure to pay minimum wages, in violation of the California Labor Code; (2) failure to pay
12 overtime wages, in violation of the Labor Code and state law; (3) failure provide itemized wage
13 statements, in violation of the Labor Code; (4) failure to pay waiting -time penalties, in violation
14 of the Labor Code; (5) failure to pay the wages owed every pay period, in violation of the Labor
15 Code; (6) common-law conversion (based on a failure to pay gratuities from consumers); (7)
16 failure to reimburse for expenses, in violation of the Labor Code; (8) a violation of California’s
17 Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 et seq., based on unfair business
18 practices; (9) a PAGA claim (predicated on Labor Code violations; (10) a violation of the FLSA;
19 and (11) failing to pay the minimum wage required by the Redwood Ordinance.⁷

20 On September 25, 2019, the defendant removed the case to federal court.⁸

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23 ² Notice of Removal – ECF No. 1 at 1 (¶ 1).

24 ³ Mot. – ECF No. 17 at 4.

25 ⁴ Tidrick Decl. – ECF No. 17-1 at 5–6 (¶¶ 14–15).

26 ⁵ *Id.*; State Court Order, Ex. 6 to Tidrick Decl. – ECF No. 17-1 at 240–47.

27 ⁶ SAC, Ex A to Notice of Removal – ECF No. 1-1

28 ⁷ *Id.* at ECF No. 1-1 at 18–39 (¶¶ 63–187)

⁸ Notice of Removal – ECF No. 1.

1 The parties engaged in discovery and ultimately settled the case pursuant to a settlement
2 agreement that differs from the original settlement agreement in two respects.⁹ First, the new
3 settlement agreement requires the defendant to offer employment status to all individuals working
4 for the defendant as exotic dancers now and in the future.¹⁰ Second, the new settlement agreement
5 provides that checks will be mailed automatically to all settlement class members who do not opt
6 out, without any requirement to submit a claim form.¹¹

7 The plaintiff filed her unopposed motion for preliminary approval of the settlement.¹² All
8 parties have consented to magistrate-judge jurisdiction.¹³

9 The court held a hearing on May 14, 2020.¹⁴

11 **2. Proposed Settlement**

12 **2.1 Settlement Class**

13 There are approximately 90 class members.¹⁵ The settlement agreement defines the class
14 period, the proposed class, and the amounts available for distribution:

15 (a) The “Class Period” for purposes of this Stipulation and settlement means the period
16 from December 4, 2013, through date the Court enters an order granting preliminary
17 approval of the Parties’ settlement pursuant to the terms of this Stipulation.

18 (b) The “Class” consists of all individual(s) who, during the Class Period, performed as
19 exotic dancers at Jose Torres L.D. Latin Club Bar, Inc. d/b/a Hanky Panky Club (“the
20 Nightclub”) pursuant to an “independent contractor” agreement. A “Class Member” is a
21 member of the Class. There are approximately ninety (90) Class Members.

22 (c) “Settlement Class” means all Class Members who do not timely and properly excluded
23 themselves from the terms of this Stipulation and settlement. A “Settlement Class
24 Member” is a member of the Settlement Class.

25 ⁹ Mot. – ECF No. 17 at 5; Settlement Agreement – ECF No. 14.

26 ¹⁰ *Id.* at 11 (§ 15).

27 ¹¹ *Id.* at 9 (§ 10(b)).

28 ¹² Mot. – ECF No. 17.

¹³ Consent Forms – ECF Nos. 5 & 6.

¹⁴ Minute Entry – ECF No. 22.

¹⁵ Settlement Agreement – ECF No. 14 at 4–5 (§ 5(b)).

1 (d) “Cash Pool Class” means all Settlement Class Members who sign, deposit, and/or cash
2 a settlement check mailed pursuant to this settlement and who thereby consent to join as
3 party plaintiffs in the claims asserted under the Federal Labor Standard Act, 29 U.S.C. §§
201 *et seq.* (“FLSA Claims”) in this Litigation. A “Cash Pool Claimant” is a member of
the Cash Pool Class.¹⁶

4 **2.2 The Cash Pool**

5 The settlement includes a \$135,000 cash pool that the settlement administrator will distribute
6 as follows:¹⁷

- 7 (i) Payments to the Settlement Class Members;
- 8 (ii) Plaintiff’s attorney’s fees and costs (as determined by the court);
- 9 (iii) \$1,500 to the LWDA as payment for the PAGA claims;
- 10 (iv) A service award to the class representative of \$10,000 (if approved by the court);
- 11 (v) Administrative costs of the settlement; and
- 12 (vi) Any cy pres payments.¹⁸

13 The total PAGA payment is \$2,000, and 75 percent, or \$1,500, will be paid to the LWDA as
14 PAGA civil penalties, and 25 percent, or \$500, will be distributed to Settlement Class members.¹⁹

15 The plaintiff’s counsel will ask for fees of no more than 25 percent of the Gross Settlement
16 Value and costs of no more than \$5,000.²⁰

17 The administration costs for the settlement are estimated at no more than \$10,000.²¹

18 The allocation to the class members is as follows:

- 19 (a) Cash Payments shall be distributed to Settlement Class members *pro rata* based on the
20 number of "Performance Months" (defined as any calendar month during the Class Period

21 ¹⁶ *Id.* (§ 5).

22 ¹⁷ The numbering matches the settlement agreement. *Id.* at 9 (¶¶ 10(a)).

23 ¹⁸ *Id.* at 5–6 (§ 6).

24 ¹⁹ *Id.* at 5 (§ 6). “[A]n aggrieved employee acting as the LWDA’s proxy or agent by bringing a PAGA
25 action may likewise recover underpaid wages as a civil penalty under section 558. *Thurman v.*
26 *Bayshore Transit Mgmt., Inc.*, 203 Cal App. 4th 1112, 1148 (2012) Such underpaid wages “go[]
entirely to the affected employee or employees as an express exception to the general rule that civil
penalties recovered in a PAGA action are distributed 75 percent to the [LWDA] and 25 percent to the
aggrieved employees (§ 2699, subd. (i)).” *Id.* at 1145. The parties understand and agree that the
defendant’s payment of funds to the Cash Pool is the consideration for resolution of the PAGA claims
premised on Labor Code § 558. Settlement Agreement – ECF No. 14 at 5–6 n.1.

27 ²⁰ *Id.* at 6 (§ 7), 10 (§ 14(a)).

28 ²¹ *Id.* at 6–7 (§§ 8(a)(i), (vi)).

1 in which a Class Member had at least one date of performance — i.e., a connected block of
2 time that the Class Member was at the Nightclub to perform, regardless of the fact that the
3 date extended over more than one calendar day) worked during the Class Period (which is,
4 as noted, is the time period from December 4, 2013 through date the Court enters an order
5 granting preliminary approval of the Parties' settlement pursuant to the terms of this
6 Stipulation).

(b) Determination of Performance Months. Within fourteen (14) days after entry of the
Preliminary Approval Order, Defendant shall provide the Settlement Administrator with
the number of Performance Months accrued by each Settlement Class member during the
Class Period.²²

7 The plaintiff's counsel estimates the Net Settlement Amount will be \$74,750.²³ The plaintiff's
8 counsel estimates that, including the \$500 PAGA penalties, results in \$836 per class member.²⁴

9 Settlement checks will be mailed and will expire 120 days from the date of issuance by the
10 Settlement Administrator.²⁵ The value of any expired checks will be paid to the *cy pres* recipient.²⁶

11 **2.3 Changed Business Practices**

12 Each exotic dancer who continues to work for the defendant, and each person who applies to
13 perform as an exotic dancer, will be offered employment status.²⁷ The defendant will offer current
14 and prospective exotic dancers an hourly wage and one logo costume per month to wear while
15 performing.²⁸

16 **2.4 Release**

17 There are two sets of releases.

18 First, if a class member does not exclude herself (as described under the notice) and does not
19 cash the mailed check, she will release the claims in the case but not the FLSA claims.²⁹

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22 ²² *Id.* at 9 (§ 9).

23 ²³ Mot. – ECF No. 17 at 7.

24 ²⁴ *Id.* The court's math does not add up precisely to this figure (as discussed at the hearing), and thus
25 the court asks the parties to check the math in their submission at the final fairness hearing.

26 ²⁵ Settlement Agreement – ECF No. 14 at 9 (§ 10(b)), 10 (§ 12).

27 ²⁶ *Id.* at 10 (§ 13(b)).

28 ²⁷ Settlement Agreement – ECF No. 14 at 11 (§ 15).

²⁸ *Id.*

²⁹ *Id.* at 3 (§§ 5(c)–(d)), 13–14 (§ 18(b)).

1 Second, if a class member cashes the check, she will release all claims, including the FLSA
2 claim.³⁰

3 The settlement agreement includes a general release for the named plaintiff.³¹

4 **2.5 Administration**

5 The settlement agreement has three acceptable proposed administrators: Rust Consulting, Inc.,
6 Settlement Services, Inc., and CPT Group, Inc.³² Other administration procedures — including
7 notice, administration, procedures for exclusion, and procedures for objections — are set forth in
8 the settlement agreement.³³

10 **ANALYSIS**

11 **1. Jurisdiction**

12 The court has federal-question jurisdiction under 28 U.S.C. § 1331 for the FLSA claim and
13 supplemental jurisdiction under 28 U.S.C. § 1367 for the state-law claims.³⁴

15 **2. Conditional Certification of Settlement Classes**

16 The court determines whether the settlement classes meet the requirements for class
17 certification first under Rule 23 and then under the FLSA.

18 **2.1 Rule 23 Requirements**

19 The court reviews the propriety of class certification under Federal Rule of Civil Procedure
20 23(a) and (b). When parties enter into a settlement before the court certifies a class, the court
21 “must pay ‘undiluted, even heightened, attention’ to class certification requirements” because the
22 court will not have the opportunity to adjust the class based on information revealed at trial. *Staton*

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³⁰ *Id.* at 3 (§ 5(d), 14 (§ 18(c))).

25 ³¹ *Id.* at 14–15 (¶ 18(d)).

26 ³² Mot. – ECF No. 17 at 2 (¶ 4); Settlement Agreement – ECF No. 14 at 6 (§ 8(a)(i)).

27 ³³ *Id.* at 8–9 (§§ 8(c)–(e)), 11–13 (§§ 16–17).

28 ³⁴ Notice of Removal – ECF No. 1 at 1–2 (identifying federal-question jurisdiction as the basis for removal).

1 v. *Boeing Co.*, 327 F.3d 938, 952–53 (9th Cir. 2003) (quoting *Amchem Prods., Inc. v. Windsor*,
2 521 U.S. 591, 620 (1997)); *Espinosa v. Ahearn (In re Hyundai and Kia Fuel Econ. Litig.)*, 926
3 F.3d 539, 557 (9th Cir. 2019) (en banc).

4 Class certification requires the following: (1) the class must be so numerous that joinder of all
5 members individually is “impracticable”; (2) there must be questions of law or fact common to the
6 class; (3) the claims or defenses of the class representatives must be typical of the claims or
7 defenses of the class; and (4) the person representing the class must be able to fairly and
8 adequately protect the interests of all class members. Fed. R. Civ. P. 23(a); *In re Hyundai and Kia*,
9 926 F.3d at 556. Also, the common questions of law or fact must predominate over any questions
10 affecting only individual class members, and the class action must be superior to other available
11 methods for fairly and efficiently adjudicating the controversy. Fed. R. Civ. P. 23(b)(3).

12 The court finds preliminarily (and for settlement purposes only) that the Rule 23(a) factors —
13 numerosity, commonality, typicality, and adequacy — support the certification of the class. It also
14 finds preliminarily under Rule 23(b)(3) (and for settlement purposes only) that the common
15 questions predominate over any questions affecting only individual members, and a class action is
16 superior to other available methods.

17 First, there are approximately 90 class members.³⁵ The class is numerous. *See Nelson v. Avon*
18 *Prods.*, No. 14-cv-02276-BLF, 2015 WL 1778326, at *5 (N.D. Cal. Apr. 17, 2015).

19 Second, there are questions of law and fact common to the class that predominate over any
20 individual issues. The common questions are whether the defendant misclassified all exotic
21 dancers as independent contractors during the class period, the defendants’ uniform policies and
22 practices regarding compensation. *Cf. Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011);
23 *Betorina v. Ranstad US, L.P.*, No. 15-cv-03646-EMC, 2017 WL 1278758, at *4 (N.D. Cal. Apr. 6,
24 2017). These common questions predominate over any questions affecting only individual
25 members.

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28 ³⁵ Tidrick Decl. – ECF No. 17-1 at 4 (¶ 10); Settlement Agreement – ECF No. 14 at 4–5 (§ 5(b)).

1 Third, the claims of the representative parties are typical of the claims of the class. The
2 representative plaintiff and all class members allege wage-and-hours and FLSA violations based
3 on similar facts. All representatives possess the same interest and suffer from the same injury. *Cf.*
4 *Betorina*, 2017 WL 1278758, at *4.

5 Fourth, the representative plaintiff fairly and adequately protects the interests of the class. The
6 factors relevant to a determination of adequacy are (1) the absence of potential conflict between
7 the named plaintiff and the class members, and (2) counsel chosen by the representative party who
8 is qualified, experienced, and able to vigorously conduct the litigation. *In re Hyundai and Kia*, 926
9 F.3d at 566 (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998)). The court is
10 satisfied that the factors exist here: the named plaintiff has shared claims and interests with the
11 class (and no conflicts of interest), and has retained qualified and competent counsel who have
12 prosecuted the case vigorously. *Cf. id.*; *Local Joint Exec. Bd. of Culinary/Bartender Tr. Fund v.*
13 *Las Vegas Sands, Inc.*, 244 F.3d 1152, 1162 (9th Cir. 2001); *Hanlon*, 150 F.3d at 1021–22.

14 Finally, a class action is superior to other available methods for fairly and efficiently
15 adjudicating the controversy.

16 In sum, the prerequisites of Fed. R. Civ. P. 23(a) and (b)(3) are met. The court conditionally
17 certifies the class under Federal Rule of Civil Procedure 23(b)(3) for settlement purposes only and
18 for the purpose of giving the class notice of the settlement and conducting a final approval
19 hearing.

20 **2.2 FLSA Class**

21 The FLSA authorizes opt-in representative actions where the complaining parties are
22 “similarly situated” to other employees. 29 U.S.C. § 216(b); *see generally Tyson Foods, Inc. v.*
23 *Bouaphakeo*, 136 S. Ct. 1036, 1042 (2016). The class representative worked as an exotic dancer
24 during the class period, and her wage-and-hour claims — and related issues such as her
25 employment status — present common fact and law questions. The court preliminarily authorizes
26 the FLSA collective for settlement purposes only.

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1 **3. Preliminary Approval of Settlement**

2 The approval of a class-action settlement has two stages: (1) the preliminary approval, which
3 authorizes notice to the class; and (2) a final fairness hearing, where the court determines whether
4 the parties should be allowed to settle the class action on the agreed-upon terms.

5 Settlement is a strongly favored method for resolving disputes, particularly “where complex
6 class action litigation is concerned.” *In re Hyundai and Kia*, 926 F.3d at 556 (quoting *Allen v.*
7 *Bedolla*, 787 F.3d 1218, 1223 (9th Cir. 2015)). A court may approve a proposed class-action
8 settlement “only after a hearing and only on finding that it is fair, reasonable, and adequate.” Fed.
9 R. Civ. P. 23(e)(2). The court need not ask whether the proposed settlement is ideal or the best
10 possible; it determines only whether the settlement is fair, free of collusion, and consistent with
11 the named plaintiffs’ fiduciary obligations to the class. *Hanlon*, 150 F.3d at 1026–27 (9th Cir.
12 1998). In *Hanlon*, the Ninth Circuit identified factors relevant to assessing a settlement proposal:
13 “[(1)] the strength of the plaintiff’s case; [(2)] the risk, expense, complexity, and likely duration of
14 further litigation; [(3)] the risk of maintaining class-action status throughout trial; [(4)] the amount
15 offered in settlement; [(5)] the extent of discovery completed and the stage of the proceeding; [(6)]
16 the experience and views of counsel; [(7)] the presence of a government participant; and [(8)] the
17 reaction of the class members to the proposed settlement.” *Id.* at 1026 (citation omitted).

18 When parties “negotiate a settlement agreement before the class has been certified, “settlement
19 approval ‘requires a higher standard of fairness’ and ‘a more probing inquiry than may normally
20 be required under Rule 23(e).”” *Roes, 1–2 v. SFBSC Management*, 944 F.3d 1035, 1043 (9th Cir.
21 2019) (quoting *Dennis v. Kellog*, 697 F.3d, 858, 864 (9th Cir. 2012)). “Specifically, ‘such
22 settlement agreements must withstand an even higher level of scrutiny for evidence of collusion or
23 other conflicts of interest than is ordinarily required under Rule 23(e) before securing the court’s
24 approval as fair.’” *Id.* at 1049 (quoting *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935,
25 941 (9th Cir. 2011)).

26 The court has evaluated the proposed settlement agreement for overall fairness under the
27 *Hanlon* factors and concludes that preliminary approval is appropriate.

1 First, the settlement appears fair. The settlement agreement was the result of an adversarial,
2 arms-length negotiation process that provides value commensurate to other wage-and-hour
3 settlements on behalf of exotic dancers.³⁶ The settlement payout corresponds to each class
4 members' tenure as an exotic dancer.³⁷

5 Second, the value of the settlement is significant given the potential recovery and risk. The
6 plaintiff's counsel calculates the potential maximum recovery in the case, a calculation that
7 assumes that a jury will conclude that the defendant misclassified the class members as
8 independent contractors.³⁸ This is not an assured outcome. *See Buel v. Chowder House, Inc.*, 2006
9 WL 1545860 (Cal. App. June 7, 2006) ("On appeal, Buel contends that the jury erred in finding
10 her to be an independent contractor. We conclude that the jury verdict was supported by
11 substantial evidence and affirm."). When viewed against the risk of no recovery, this settlement is
12 fair.

13 Third, the value of the settlement is fair given the complexity, length, and expense of
14 protracted litigation. When weighed against the potential delay and added expense to achieve the
15 same or better outcome at trial, the settlement agreement is fair.

16 Fourth, a class action allows class members — who otherwise would not pursue their claims
17 individually because costs would exceed recoveries — to obtain relief.

18 The recoveries here are adequate to justify preliminary approval. Given other comparable
19 settlements and the litigation risks identified above, the settlement amount at least preliminarily
20 appears fair.

21 For the same reasons, the court preliminarily approves the settlement of the FLSA collective
22 action.

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26 ³⁶ Tidrick Decl. – ECF No. 17-1 at 4 (¶¶ 11–12); Recent Settlements, Exs. 3–5 to Tidrick Decl. – ECF
No. 17-1 at 23–239.

27 ³⁷ Settlement Agreement – ECF No. 14 at 9 (§ 9).

28 ³⁸ Mot. – ECF No. 17 at 19–20.

1 The PAGA allocation is within the range of reasonable settlements.³⁹ *See, e.g., Vicerol v.*
2 *Mistras Grp.*, No. 15-cv-02198-EMC, 2016 WL 5907869, at *8–9 (N.D. Cal. Oct. 11, 2016).

3 The court will address the issue of attorney’s fees at the final fairness hearing. *See Hanlon*, 150
4 F.3d at 1029 (twenty-five percent is a benchmark in common fund cases); *cf. Vizcaino v.*
5 *Microsoft Corp.*, 290 F.3d 1043, 1048 (9th Cir. 2002) (25 percent benchmark, though a starting
6 point for analysis, may be inappropriate in some cases; fees must be supported by findings).

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8 **4. Appointment of Class Representative, Class Counsel, and Claims Administrator**

9 The court provisionally appoints Jane Roe as the class representative and finds provisionally
10 that she has claims that are typical of members of the class generally and that she is an adequate
11 representative of the other members of the proposed classes.

12 The court provisionally appoints Steven G. Tidrick, Esq. and Joel Young, Esq. (of the Tidrick
13 Law Firm LLP) as class counsel for settlement purposes only. *See* Fed. R. Civ. P. 23(a) & (g)(1).
14 The court finds provisionally that they have sufficient qualifications, experience, and expertise in
15 prosecuting class actions.

16 The court approves the proposed administrators. The administrator will administer the
17 settlement in accordance with the requirements set forth in the settlement agreement.

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19 **5. Class Notice**

20 The court approves the class notice and plan. The court finds that the class notice provides the
21 best notice practicable, satisfies the notice requirements of Rule 23, adequately advises class
22 members of their rights under the settlement agreement, and meets the requirements of due
23 process. *Cf. In re Hyundai and Kia*, 926 F.3d at 567 (“Notice is satisfactory if it generally
24 describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to
25 investigate and to come forward and be heard.”) (internal quotation marks omitted) (quoting
26 *Rodriguez*, 563 F.3d at 962). The notice fairly, plainly, accurately, and reasonably provide class
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³⁹ *Id.* at 23 (collecting cases).

1 members with all required information, including (among other things): (1) a summary of the
2 lawsuit and claims asserted; (2) a clear definition of the classes; (3) a description of the material
3 terms of the settlement, including the estimated payment; (4) a disclosure of the release of the
4 claims should they remain class members; (5) an explanation of class members’ opt-out rights, a
5 date by which they must opt out, and information about how to do so; (6) the date, time, and
6 location of the final fairness hearing; and (7) the identity of class counsel and the provisions for
7 attorney’s fees, costs, and class-representative service awards.⁴⁰

8

9 **6. Service Awards**

10 District courts must evaluate proposed awards individually, using relevant factors that include
11 “the actions the plaintiff has taken to protect the interests of the class, the degree to which the class
12 has benefitted from those actions, . . . [and] the amount of time and effort the plaintiff expended in
13 pursuing the litigation.” *Staton*, 327 F.3d at 977 (citation omitted). “Such awards are discretionary
14 . . . and are intended to compensate class representatives for work done on behalf of the class, to
15 make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to
16 recognize their willingness to act as a private attorney general.” *Rodriguez*, 563 F.3d at 958–59
17 (citation omitted). The Ninth Circuit has “noted that in some cases incentive awards may be proper
18 but [has] cautioned that awarding them should not become routine practice” *Radcliffe v.*
19 *Experian Info. Solutions Inc.*, 715 F.3d 1157, 1163 (9th Cir. 2013) (discussing *Staton*, 327 F.3d at
20 975–78). The Ninth Circuit also has emphasized that district courts “must be vigilant in
21 scrutinizing all incentive awards to determine whether they destroy the adequacy of the class
22 representatives.” *Id.* at 1164.

23 The court defers consideration of the awards until the final approval hearing.

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28 ⁴⁰ Settlement Notice, Ex. 1 to Tidrick Decl. – ECF No. 17-1 at 8–16.

1 **7. Cy Pres Award**

2 The *cy pres* distribution appears to account for and have a substantial nexus to the nature of the
3 lawsuit, the objectives of the statutes, and the interests of the silent class members. *See Lane v.*
4 *Facebook, Inc.*, 696 F.3d 811, 819–22 (9th Cir. 2012); *Nachshin v. AOL, LLC*, 663 F.3d 1034,
5 1038–41 (9th Cir. 2011). The value of any uncashed checks will be distributed to the Saint Francis
6 Center of Redwood City, or if not approved by the court, The Justice and Diversity Center of the
7 Bar Association of San Francisco (a public-interest-law non-profit organization).⁴¹

8 The court defers the consideration of any *cy pres* award to the final fairness hearing.

9
10 **8. Compliance with Class Action Fairness Act**

11 The plaintiffs will provide notice of the settlement — which is deemed filed as of the date of
12 this order — and other information showing compliance with the Class Action Fairness Act of
13 2005, 28 U.S.C. § 1715, to the appropriate federal and state officials. Any final settlement
14 approval will be more than 90 days after service as required by 28 U.S.C. § 1715.⁴²

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16 **9. Procedures for Final Approval Hearing**

17 **9.1 Deadlines⁴³**

<u>Event</u>	<u>Date</u>
18 Defendant provides class list to administrator	14 days after Preliminary Approval
19 Deadline for motion for service award	14 days before the deadline for objections
20 Deadline for motion for attorney’s fees and costs	14 days before the deadline for objections

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24 ⁴¹ Settlement Agreement – ECF No. 14 at 10 (§ 13(b)).

25 ⁴² According to Newberg on Class Actions, “[t]he Class Action Fairness Act of 2005 (CAFA) added
26 an additional component to settlement notice, namely that certain government officials—whether or
27 not themselves class members — must receive notice of *any class action* settled in federal court.”
28 *Newberg on Class Actions*, § 8:18 (emphasis added). In other cases, the parties have sent the notice
just to be cautious, which is why the court flags the issue. If the parties take a different view, then they
may raise their preferred approach with the court.

⁴³ The deadlines are from the settlement agreement at ECF No. 14 and the proposed order at ECF No.
17-2.

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Deadline for objections	60 days after notice is mailed
Deadline for opting out of the settlement	60 days after notice is mailed
Deadline for plaintiff to file motion for final approval	91 days after the Preliminary Approval
Final Approval Hearing	August 27, 2020, at 9:30 a.m.

9.2 Objections and Exclusions

The processes are in the settlement agreement and in the class notice.

CONCLUSION

The court (1) conditionally certifies the Settlement Class and the FLSA collective for settlement purposes only, (2) preliminarily approves the settlement and authorizes notice as set forth in this order, (3) approves the notice plan, (4) provisionally appoints the class representatives and class counsel, (5) approves CPT Group, Inc. as the claims administrator, (6) orders the procedures in this order (including all dates in the chart), and (7) orders the parties and the claims administrator to carry out their obligations in the settlement agreement.

This disposes of ECF No. 17.

IT IS SO ORDERED.

Dated: May 14, 2020



LAUREL BEELER
United States Magistrate Judge