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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 EDUARDO NUNEZ, individually and on  
12 behalf of others similarly situated,

13 Plaintiff,

14 v.

15 BAE SYSTEMS SAN DIEGO SHIP  
16 REPAIR INC., a California Corporation;  
and DOES 1 through 50 inclusive,

17 Defendants.  
18  
19

Case No.: 16-CV-2162 JLS (NLS)

**ORDER: (1) CONDITIONALLY  
CERTIFYING SETTLEMENT  
CLASS ACTION; (2)  
PRELIMINARILY APPROVING  
PROPOSED SETTLEMENT; (3)  
APPROVING NOTICE TO CLASS;  
AND (4) SETTING FINAL  
APPROVAL HEARING DATE**

(ECF No. 15)

20 Presently before the Court is Plaintiff Eduardo Nunez's and Defendant BAE  
21 Systems San Diego Ship Repair Inc.'s (the "Parties") Joint Motion for Order (1)  
22 Conditionally Certifying Settlement Class Action; (2) Preliminarily Approving Proposed  
23 Settlement; (3) Approving Notice to Class; and (4) Setting Final Approval Hearing Date.  
24 ("Prelim. Settlement Mot.") (ECF No. 15). Because the settlement is fundamentally fair,  
25 reasonable, and adequate, the Court **GRANTS** the Parties' Preliminary Settlement Motion.

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1 **BACKGROUND**

2 Plaintiff Eduardo Nunez brings a class action suit seeking compensation on behalf  
3 of all non-exempt employees of Defendant BAE Systems San Diego Ship Repair Inc.  
4 (“SDSR”) for unpaid wages and penalties, as well as other violations of California law.  
5 (Prelim. Settlement Mot. 9,<sup>1</sup> ECF No. 15-1.) Defendant SDSR is an international defense,  
6 aerospace, and security company that maintains a single shipyard in San Diego Bay, where  
7 it works on virtually all types of government and commercial vessels (e.g., the U.S. Navy  
8 fleet). (FAC ¶ 14, ECF No. 11.) The proposed class includes all non-exempt employees at  
9 SDSR who worked at any time during the period May 27, 2012 through October 13, 2016  
10 (“Settlement Class / Class Members”). (Prelim. Settlement Mot. 10, ECF No. 15-1.)

11 Plaintiff’s Amended Complaint asserts seven claims for relief under various  
12 provisions of California law:

- 13
- 14 1. Failure to Pay Straight-Time & Overtime Wages
  - 15 2. Violation of the Unfair Competition Law
  - 16 3. Cal. Bus. & Prof. Code §§ 17200, *et seq.*
  - 17 4. Failure to Provide Accurate Wage Statements
  - 18 5. Failure to Provide Rest Periods
  - 19 6. Failure to Reimburse Employees for Business Expenses
  - 20 7. Failure to Provide All Compensation Owed Upon Termination of  
Employment
  - 21 8. Violation of the Private Attorney General Act

22 (*See generally* FAC, ECF No. 11.) Plaintiff generally alleges that because there would  
23 typically be 100 SDSR workers waiting in line to pass through a checkpoint before they  
24 could break their shift for lunch, Plaintiff and other workers were not provided with a full  
25 30-minute meal break due to the time spent waiting in line. (*Id.* ¶ 10.) Thus, Plaintiff argues  
26 Defendant failed to provide Plaintiff and other workers with a duty-free 30-minute meal  
27 period and failed to pay them wages for their time spent disembarking from the ship,

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<sup>1</sup> Pin citations refer to the CM/ECF page numbers electronically stamped at the top of each page.

1 returning tools, and waiting in the security line, among other activities. (*Id.*) Plaintiff  
2 additionally alleges that Defendant improperly forced him and others to purchase clothes  
3 and shoes from Defendant and that Defendant did not provide reimbursements for these  
4 purchases. (*Id.*) As a result of this fraudulent behavior, the wage statements that Defendant  
5 provided were inaccurate. (*Id.* ¶ 11.)

6 The Parties entered into extensive pre-suit negotiations for the purpose of settling  
7 their disputes, such as (1) voluntary exchange of information, including SDSR’s  
8 employment policies, sworn declarations from putative class members, and thousands of  
9 electronic records containing class member data (e.g., individualized rates of pay,  
10 employment dates, time records, and badge-swipe data); and (2) a full-day mediation in  
11 San Francisco with Antonio Piazza, Esq., of Mediated Negotiations. (Prelim. Settlement  
12 Mot. 10, ECF No. 15-1.) The mediation was successful and resulted in a non-reversionary  
13 settlement of \$2.9 million, (*id.*), though Defendant SDSR maintains its complete denial of  
14 wrongdoing, (*id.* at 9 n.1).

15 The Parties present to the Court a Joint Motion for an Order: (1) conditionally  
16 certifying the proposed Settlement Class, defined below; (2) preliminarily approving the  
17 proposed settlement of \$2.9 million; (3) approving the proposed Notice and directing  
18 distribution of the Notice and related documents; and (4) setting a schedule for final  
19 approval. As noted above, although SDSR stipulates both to certification of a Settlement  
20 Class and the proposed Settlement, Defendant continues to deny all allegations of unlawful  
21 conduct alleged in the Complaint, and does not admit or concede that it has, in any manner,  
22 violated federal or California laws or committed any other unlawful action that would  
23 entitle Plaintiff or any class to any recovery.

#### 24 **SETTLEMENT TERMS**

25 The Parties have submitted a comprehensive settlement document with  
26 approximately twenty-three pages of substantive terms, and a five-page proposed class  
27 notice. (Joint Stipulation of Settlement and Release (“Settlement Agreement”) 31–60, ECF

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1 No. 15-1.) The settlement provides monetary relief but no programmatic relief. Plaintiff  
2 Eduardo Nunez, as class representative, supports the Settlement Agreement. (*Id.* at 54.)

3 **I. Monetary Relief**

4 SDSR proposes to pay a Maximum Settlement Amount of \$2.9 million. (Prelim.  
5 Settlement Mot. 10, ECF No. 15-1.) From this amount will be deducted: (a) all Settlement  
6 payments to Class Members eligible for Settlement payments; (b) the Class Representative  
7 service payment approved by the Court; (c) Class Counsel’s attorneys’ fees and expenses  
8 approved by the Court; (d) the Settlement Administrator’s fees and expenses; (e) payment  
9 made to the State of California Labor Workforce and Development Agency (“LWDA”);  
10 (f) the employer’s portion of FICA, FUTA, and all other state and federal payroll taxes on  
11 the “wage” portion of the Settlement payments to Class Members; and (g) an additional  
12 flat amount of \$250 for each employee who separated employment during the Covered  
13 Period (“Wait Time Penalties”). (*Id.* at 11.) SDSR will automatically make Settlement  
14 payments to Class Members (unless they choose to opt out) based on the following  
15 formula:

16 After deductions of the Court-approved service payment to the Class  
17 Representative, the Court-approved attorneys’ fees and costs for Class  
18 Counsel, a payment for the Settlement Administrator’s fees and  
19 expenses, payment to the LWDA, the employer’s portion of state and  
20 federal payroll taxes and payment of Wait Time Penalties, the  
21 Remainder of the Maximum Payment will be available for distribution  
22 to the Payment-Eligible Class Members (the “Class Settlement  
23 Proceeds”). The Remainder shall be distributed as follows:

22 Payment-Eligible Class Members will receive a payment based on each  
23 person’s compensable work weeks, which shall be all weeks worked as  
24 non-exempt employees by the Payment-Eligible Class Members during  
25 the Covered Period (“Compensable Work Weeks”). The dollars per  
26 Compensable Work Week will be calculated by dividing the total  
27 Compensable Work Weeks into the Remainder. That amount (dollars  
28 per week) will be multiplied by the number of Compensable Work  
Weeks for each Payment-Eligible Class Member.

(*Id.*) The check will escheat to the State of California or any other State having jurisdiction

1 over the Class Member’s assets if the Class Member fails to cash his or her check within  
2 120 days after it is mailed. (*Id.* at 12.)

### 3 **RULE 23 SETTLEMENT CLASS CERTIFICATION**

4 Before granting preliminary approval of a class action settlement agreement, the  
5 Court must first determine whether the proposed class can be certified. *Amchem Prods. v.*  
6 *Windsor*, 521 U.S. 591, 620 (1997) (indicating that a district court must apply “undiluted,  
7 even heightened, attention [to class certification] in the settlement context” in order to  
8 protect absentees).

9 Class actions are governed by Federal Rule of Civil Procedure 23. In order to certify  
10 a class, each of the four requirements of Rule 23(a) must first be met. *Zinser v. Accufix*  
11 *Research Inst., Inc.*, 253 F.3d 1180, 1186 (9th Cir. 2001). Rule 23(a) allows a class to be  
12 certified only if:

- 13 (1) the class is so numerous that joinder of all members is
- 14 impracticable;
- 15 (2) there are questions of law or fact common to the class;
- 16 (3) the claims or defenses of the representative parties are typical
- 17 of the claims or defenses of the class; and
- 18 (4) the representative parties will fairly and adequately protect
- 19 the interests of the class.

20 Next, in addition to Rule 23(a)’s requirements, the proposed class must satisfy the  
21 requirements of one of the subdivisions of Rule 23(b). *Zinser*, 253 F.3d at 1186. Here,  
22 Plaintiff seeks to certify the Settlement Class under subdivision Rule 23(b)(3), which  
23 permits certification if “questions of law or fact common to class members predominate  
24 over any questions affecting only individual class members,” and “a class action is superior  
25 to other available methods for fairly and efficiently adjudicating the controversy.” The  
26 Court addresses each of these requirements in turn.

#### 26 **I. Rule 23(a)(1): Numerosity**

27 Federal Rule of Civil Procedure 23(a)(1) requires that a class must be “so numerous  
28 that joinder of all members is impracticable.” “[C]ourts generally find that the numerosity

1 factor is satisfied if the class comprises 40 or more members and will find that it has not  
2 been satisfied when the class comprises 21 or fewer.” *Celano v. Marriott Int’l, Inc.*, 242  
3 F.R.D. 544, 549 (N.D. Cal. 2007).

4 Here, the proposed Settlement Class consists of approximately 1,930 individuals, all  
5 of which are identifiable from SDSR’s data. (Prelim. Settlement Mot. 16, ECF No. 15-1.)  
6 Accordingly, joinder of all members would be impracticable for purposes of Rule 23(a)(1),  
7 and the numerosity requirement is therefore satisfied.

## 8 **II. Rule 23(a)(2): Commonality**

9 Federal Rule of Civil Procedure 23(a)(2) requires that there be “questions of law or  
10 fact common to the class.” Commonality requires that “the class members ‘have suffered  
11 the same injury.’” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349–50 (2011) (quoting  
12 *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157 (1982)). “The existence of shared legal  
13 issues with divergent factual predicates is sufficient, as is a common core of salient facts  
14 coupled with disparate legal remedies within the class.” *Hanlon v. Chrysler Corp.*, 150  
15 F.3d 1011, 1019 (9th Cir. 1998).

16 Here, the Parties have carefully defined the Settlement Class to encompass all SDSR  
17 employees adversely affected by the allegedly fraudulent policies and practices set forth  
18 above. All common questions thus revolve around whether the alleged fraudulent policies  
19 and practices in fact were fraudulent and impacted the class members. Accordingly, it is  
20 appropriate for these issues to be adjudicated on a class-wide basis, and Rule 23(a)(2) is  
21 satisfied.

## 22 **III. Rule 23(a)(3): Typicality**

23 To satisfy Federal Rule of Civil Procedure 23(a)(3), Plaintiff’s claims must be  
24 typical of the claims of the Class. The typicality requirement is “permissive” and requires  
25 only that Plaintiff’s claims “are reasonably coextensive with those of absent class  
26 members.” *Hanlon*, 150 F.3d at 1020. “The test of typicality ‘is whether other members  
27 have the same or similar injury, whether the action is based on conduct which is not unique  
28 to the named plaintiffs, and whether other class members have been injured by the same

1 course of conduct.” *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992)  
2 (quoting *Schwartz v. Harp*, 108 F.R.D. 279, 282 (C.D. Cal. 1985)). “[C]lass certification  
3 should not be granted if ‘there is a danger that absent class members will suffer if their  
4 representative is preoccupied with defenses unique to it.’” *Id.* (citation omitted).

5 Here, Plaintiff is an SDSR employee whose claims allegedly arise out of the same  
6 underlying SDSR policies and practices as those pertaining to the proposed Settlement  
7 Class. (Prelim. Settlement Mot. 17–18, ECF No. 15-1.) Accordingly, Plaintiff’s claims are  
8 typical of the claims of the members of the proposed Settlement Class, thus satisfying Rule  
9 23(a)(3).

#### 10 **IV. Rule 23(a)(4): Adequacy**

11 Federal Rule of Civil Procedure 23(a)(4) requires that the named representatives  
12 fairly and adequately protect the interests of the class. “To satisfy constitutional due  
13 process concerns, absent class members must be afforded adequate representation before  
14 entry of judgment which binds them.” *Hanlon*, 150 F.3d at 1020 (citing *Hansberry v. Lee*,  
15 311 U.S. 32, 42–43 (1940)). To determine legal adequacy, the Court must resolve two  
16 questions: “(1) do the named plaintiffs and their counsel have any conflicts of interest with  
17 other class members, and (2) will the named plaintiffs and their counsel prosecute the  
18 action vigorously on behalf of the class?” *Id.*

19 Here, there is no reason to believe that the named representative and Class Counsel  
20 have any conflict of interest with the proposed Settlement Class members. There is also no  
21 reason to believe that the named representative and Class Counsel have thus far failed to  
22 vigorously investigate and litigate this case. Plaintiff has retained competent counsel, who  
23 have conducted extensive investigation, research, and informal discovery in this case.  
24 (Prelim. Settlement Mot. 18–19, ECF No. 15-1.) Furthermore, Class Counsel have  
25 significant class action litigation experience, are knowledgeable about the applicable law,  
26 and will continue to commit their resources to further the interests of the Class. (*Id.* at 19.)  
27 Accordingly, the named representative and Class Counsel adequately represent the  
28 proposed Settlement Class members, and Rule 23(a)(4)’s adequacy requirement is met.

1 **V. Rule 23(b)(3)**

2 Federal Rule of Civil Procedure 23(b)(3) permits certification if “questions of law  
3 or fact common to class members predominate over any questions affecting only individual  
4 class members,” and “a class action is superior to other available methods for fairly and  
5 efficiently adjudicating the controversy.”

6 **A. Predominance**

7 “The Rule 23(b)(3) predominance inquiry tests whether the proposed classes are  
8 sufficiently cohesive to warrant adjudication by representation.” *Amchem Prods.*, 521 U.S.  
9 at 623. “Rule 23(b)(3) focuses on the relationship between the common and individual  
10 issues.” *Hanlon*, 150 F.3d at 1022.

11 Here, the common issues of whether Defendant’s policies and practices failed to, for  
12 example, compensate Class Members for all time worked, provide an opportunity for  
13 compliant meal and rest periods, and provide accurate wage statements predominate over  
14 the individual issues such as length of employment and particularized grievances. (*See*  
15 Prelim. Settlement Mot. 19–20, ECF No. 15-1.) Further, for purposes of settlement, Class  
16 Members are not required to prove any evidentiary or factual issues that could arise in  
17 litigation. Accordingly, the predominance requirement of Rule 23(b)(3) is satisfied.

18 **B. Superiority**

19 The final requirement for certification pursuant to Federal Rule of Civil Procedure  
20 23(b)(3) is “that a class action [be] superior to other available methods for fairly and  
21 efficiently adjudicating the controversy.” The superiority inquiry requires the Court to  
22 consider the four factors listed in Rule 23(b)(3):

- 23 (A) the class members’ interests in individually controlling the  
24 prosecution or defense of separate actions;  
25 (B) the extent and nature of any litigation concerning the  
26 controversy already begun by or against class members;  
27 (C) the desirability or undesirability of concentrating the  
28 litigation of the claims in the particular forum; and  
(D) the likely difficulties in managing a class action.

1 *See also Zinser*, 253 F.3d at 1190. A court need not consider the fourth factor, however,  
2 when certification is solely for the purpose of settlement. *See True v. Am. Honda Motor*  
3 *Co.*, 749 F. Supp. 2d 1052, 1066 n.12 (C.D. Cal. 2010); *see also Amchem*, 521 U.S. at 620  
4 (“Confronted with a request for settlement-only class certification, a district court need not  
5 inquire whether the case, if tried, would present intractable management problems, for the  
6 proposal is that there be no trial.”). The superiority inquiry focuses ““on the efficiency and  
7 economy elements of the class action so that cases allowed under [Rule 23(b)(3)] are those  
8 that can be adjudicated most profitably on a representative basis.”” *Zinser*, 253 F.3d at 1190  
9 (quoting 7A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice*  
10 *and Procedure* § 1780, at 562 (2d ed. 1986)). A district court has “broad discretion” in  
11 determining whether class treatment is superior. *Kamm v. Cal. City Dev. Co.*, 509 F.2d  
12 205, 210 (9th Cir. 1975).

13 Here, Class Members’ claims involve the same issues arising from the same factual  
14 bases. If Class Members’ claims were considered on an individual basis, almost 1,930 cases  
15 would follow a similar trajectory, and each would come to a similar result. Furthermore,  
16 individual cases would consume a significant amount of the Court’s and the Class  
17 Members’ resources. It is also likely that Class Members would not pursue litigation on an  
18 individual basis due to the high costs of pursuing individual claims. The interests of the  
19 Settlement Class Members in individually controlling the litigation are minimal, especially  
20 given the same broad-based policy and practices would be at issue. Additionally, because  
21 the majority of SDSR’s employees are located in San Diego, many of the individual cases  
22 would likely be filed in this district, and thus it is desirable to concentrate the litigation in  
23 a single forum. Given all of the above, class treatment is the superior method of  
24 adjudicating this controversy, and the superiority requirement of Rule 23(b)(3) is met.

## 25 **VI. Conclusion**

26 For the reasons stated above, the Court finds certification of the Settlement Class  
27 proper under Rule 23(b)(3). Accordingly, the Settlement Class is **CERTIFIED** for  
28 settlement purposes only.

1                                   **RULE 23 PRELIMINARY FAIRNESS DETERMINATION**

2           Having certified the Settlement Class, the Court must next make a preliminary  
3 determination as to whether the proposed settlement is “fair, reasonable, and adequate”  
4 pursuant to Federal Rule of Civil Procedure 23(e). Relevant factors to this determination  
5 include:

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

12 *Hanlon*, 150 F.3d at 1026. Furthermore, due to the “dangers of collusion between class  
13 counsel and the defendant, as well as the need for additional protections when the  
14 settlement is not negotiated by a court designated class representative,” any “settlement  
15 approval that takes place prior to formal class certification requires a higher standard of  
16 fairness.” *Id.* Additionally, although in the present case the Court has not been presented  
17 with formal applications for Class Counsel’s attorney fees or class service awards, the  
18 Court nonetheless considers these potential fees because they form part of the settlement  
19 agreement.

19   **I.     Strength of Plaintiff’s Case**

20           In order to succeed on the merits, Plaintiff would have to prove that Defendant’s  
21 practices and policies were fraudulent. (*See generally* FAC, ECF No. 11.) SDSR denies  
22 any wrongdoing, that Plaintiff is entitled to any relief at law or equity, and that Plaintiff  
23 would be able to validly certify a class in the absence of the settlement agreement. (*See*  
24 *Def.’s Answer to FAC*, ECF No. 14.) Plaintiff, however, estimates SDSR’s potential  
25 liability exposure on the underlying Labor Code claims to be approximately \$11.5 million.  
26 (Prelim. Settlement Mot. 23, ECF No. 15-1.) Additionally, the Settlement is the result of  
27 arm’s-length negotiations conducted over several months, including each Party’s  
28 individual discovery and valuation of the case and one full-day mediation session before

1 an experienced and nationally renowned mediator. (*Id.* at 22–23.) Given this disagreement  
2 and neutral third-party evaluation of the same, the Court thus finds that this factor weighs  
3 in favor of the \$2.9 million settlement being fair, reasonable, and adequate.

## 4 **II. Risk, Expense, Complexity, and Likely Duration of Further Litigation**

5 Were the case to proceed to further litigation rather than settlement, the Parties  
6 would each bear substantial risk and a strong likelihood of protracted and contentious  
7 litigation. Even though the Parties have agreed to settle this action, they fundamentally  
8 disagree regarding the validity of Plaintiff’s claims. (Prelim. Settlement Mot. 23–26, ECF  
9 No. 15-1.) Additionally, the Parties document a number of risks in litigating Plaintiff’s  
10 claims—including the fact that a class might not even be certified—and thus argue that the  
11 present Settlement affords class members at least some compensation where there might  
12 be none. (*Id.*) Indeed, the fact that Defendant disputes all aspects of Plaintiff’s claims,  
13 including the propriety of class certification in the absence of the settlement agreement,  
14 suggests that these issues would be vigorously (and therefore costly) litigated were there  
15 to be further litigation. Given the foregoing, this factor weighs in favor the settlement being  
16 fair, reasonable, and adequate.

## 17 **III. Risk of Maintaining Class Action Status Throughout Trial**

18 The Parties dispute whether the classes can be validly certified in the absence of the  
19 Settlement Agreement. Implicit in this disagreement is the likelihood of initial challenges  
20 to class certification and the potential for decertification motions even if class status is  
21 granted. Weighed against the fact that Defendant does not object to a finding that the class  
22 elements are met for purposes of this settlement, this factor also weighs in favor of the  
23 settlement being fair, reasonable, and adequate.

## 24 **IV. Amount Offered in Settlement**

25 SDSR has agreed to pay \$2.9 million to settle this lawsuit. (Prelim. Settlement Mot.  
26 26, ECF No. 15-1.) The crux of Plaintiff’s claims are that SDSR failed to pay the class  
27 members the entirety of their earned wages. Because SDSR has data regarding each  
28 affected class member, which it provided to Plaintiff prior to negotiating the Settlement

1 Agreement, the proof of each class member’s damages is largely calculable and less prone  
2 to subjective considerations. Indeed, the Parties note that the Settlement Agreement  
3 provides for Settlement Shares that are divided proportionally based on each Participating  
4 Class Member’s number of workweeks, and that each former employee will additionally  
5 receive a flat amount of \$250 in full satisfaction of wait time penalties. (*Id.* at 27.)  
6 Accordingly, this factor weighs in favor of the settlement being fair, reasonable, and  
7 adequate.

#### 8 **V. Extent of Discovery Completed and Stage of Proceedings**

9 Prior to the agreed-upon settlement, the Parties engaged in substantial informal  
10 discovery, including payroll, timekeeping, and other records. (Prelim. Settlement Mot. 23,  
11 ECF No. 15-1.) Defendant also performed its own investigation, interviewing  
12 approximately ninety potential class members and collecting approximately eighty-three  
13 declarations, on which it relied to demonstrate the disparity of class member experiences  
14 and that proper compensation was paid for time worked. (*Id.*) And as discussed, the Parties  
15 engaged a neutral third-party mediator who fully examined and discussed with each party  
16 the strengths and weaknesses of each party’s case. (*Id.*) Both Class Counsel and Defense  
17 Counsel gained significant knowledge of the relevant facts and law throughout the  
18 discovery process and through independent investigation and evaluation. Accordingly, it  
19 appears the Parties have entered into the Settlement Agreement with a strong working  
20 knowledge of the relevant facts, law, and strengths and weaknesses of their claims and  
21 defenses. Given all of the above, this factor weighs in favor of the proposed settlement  
22 being fair, reasonable, and adequate.

#### 23 **VI. Experience and Views of Counsel**

24 “The recommendations of plaintiffs’ counsel should be given a presumption of  
25 reasonableness.” *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D. Cal. 1979). And here,  
26 Class Counsel believes the Settlement Agreement is fair, reasonable, adequate, and in the  
27 best interest of the Settlement Class. (Settlement Agreement ¶ 63, ECF No. 15-1.)  
28 Furthermore, in the present case the presumption of reasonableness is warranted based on

1 Class Counsel’s expertise in complex litigation, familiarity with the relevant facts and law,  
2 and significant experience negotiating other class and collective action settlements. Given  
3 the foregoing, and according the appropriate weight to the judgment of these experienced  
4 counsel, this factor weighs in favor the proposed settlement being fair, reasonable, and  
5 adequate.

## 6 **VII. Settlement Attorneys’ Fees Provision**

7 In the Ninth Circuit, a district court has discretion to apply either a lodestar method  
8 or a percentage-of-the-fund method in calculating a class fee award in a common fund case.  
9 *Fischel v. Equitable Life Assur. Soc’y of U.S.*, 307 F.3d 997, 1006 (9th Cir. 2002). When  
10 applying the percentage-of-the-fund method, an attorneys’ fees award of “twenty-five  
11 percent is the ‘benchmark’ that district courts should award . . . .” *In re Pac. Enters. Sec.*  
12 *Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (citing *Six (6) Mexican Workers v. Ariz. Citrus*  
13 *Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990)); *Fischel*, 307 F.3d at 1006. However, a  
14 district court “may adjust the benchmark when special circumstances indicate a higher or  
15 lower percentage would be appropriate.” *In re Pac. Enters. Sec. Litig.*, 47 F.3d at 379  
16 (citing *Six (6) Mexican Workers*, 904 F.2d at 1311). “Reasonableness is the goal, and  
17 mechanical or formulaic application of either method, where it yields an unreasonable  
18 result, can be an abuse of discretion.” *Fischel*, 307 F.3d at 1007.

19 In the present case, the Settlement Agreement specifies that SDSR will not oppose  
20 Class Counsel’s request to the Court for approval of attorneys’ fees in the amount equal to  
21 25% of the Maximum Settlement Amount (\$725,000), and reasonable costs in an amount  
22 not to exceed \$20,000. (Settlement Agreement ¶ 29, ECF No. 15-1.) In support of this  
23 provision, Class Counsel note that the provision is completely consistent with the Ninth  
24 Circuit’s benchmark for reasonableness. (Prelim. Settlement Mot. 23, ECF No. 15-1 (citing  
25 *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 491 (E.D. Cal. 2010) (stating that  
26 “[t]he typical range of acceptable attorneys’ fees in the Ninth Circuit is 20% to 33 1/3% of  
27 the total settlement value, with 25% considered the benchmark”)).) Because Class

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1 Counsel’s attorneys’ fees provision is set at the benchmark, the Court concludes that the  
2 provision is reasonable.

### 3 **VIII. Class Representative Service Award Provision**

4 The Ninth Circuit recognizes that named plaintiffs in class action litigation are  
5 eligible for reasonable incentive payments. *Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th  
6 Cir. 2003). The district court must evaluate each incentive award individually, using  
7 ““relevant factors includ[ing] the actions the plaintiff has taken to protect the interests of  
8 the class, the degree to which the class has benefitted from those actions, . . . the amount  
9 of time and effort the plaintiff expended in pursuing the litigation . . . and reasonabl[e]  
10 fear[s of] workplace retaliation.”” *Id.* (citing *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th  
11 Cir. 1998)).

12 In the present case, the Settlement Agreement provides up to \$5,000 to the Class  
13 Representative, to be paid from the Maximum Payment, in addition to the Settlement  
14 payment he may otherwise receive as a class member. (Settlement Agreement ¶ 30, ECF  
15 No. 15-1.) The Class Notice states that this award is “an enhancement fee to the named  
16 plaintiff to compensate him for the time, work, and risks undertaken in bringing this Class  
17 Action.” (*Id.* at 57.) Given the foregoing, the Court concludes that the current Settlement  
18 Agreement Class Representative Payment provision should not bar preliminary approval  
19 of the Settlement Agreement.

### 20 **IX. Conclusion**

21 For the reasons stated above, the Parties’ Joint Motion for Preliminary Approval of  
22 Class Settlement is **GRANTED** regarding the Settlement Agreement.

### 23 **NOTICE OF CLASS CERTIFICATION AND SETTLEMENT**

24 Pursuant to Federal Rule of Civil Procedure 23(c)(2)(B), “[f]or any class certified  
25 under Rule 23(b)(3) the court must direct to class members the best notice that is  
26 practicable under the circumstances, including individual notice to all members who can  
27 be identified through reasonable effort.” Because the Court has determined that

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1 certification is appropriate under Rule 23(b)(3), the mandatory notice procedures required  
2 by Rule 23(c)(2)(B) must be followed.

3         Where there is a class settlement, Federal Rule of Procedure 23(e)(1) requires the  
4 court to “direct notice in a reasonable manner to all class members who would be bound  
5 by the proposal.” “Notice is satisfactory if it ‘generally describes the terms of the settlement  
6 in sufficient detail to alert those with adverse viewpoints to investigate and to come forward  
7 and be heard.’” *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 962 (9th Cir. 2009) (quoting  
8 *Churchill Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)); *see also Grunin v.*  
9 *Int’l House of Pancakes*, 513 F.2d 114, 120 (8th Cir. 1975) (“[T]he mechanics of the notice  
10 process are left to the discretion of the court subject only to the broad ‘reasonableness’  
11 standards imposed by due process.”).

12         The Parties have agreed to notify the Class Members in writing by mailing all class  
13 members a Notice of Pendency of Class Action (“Notice”). (Prelim. Settlement Mot. 14,  
14 ECF No. 15-1.) Given that some Class Members may only read Spanish, the proposed  
15 Notice will also be translated into and distributed in Spanish. (*Id.*) The Parties have agreed  
16 to have the Settlement Administrator send the Class Notice Packets to all identified Class  
17 Members using the mailing address information provided by SDSR, including use of all  
18 standard skip tracing to verify the accuracy of all addresses. (*Id.* at 27; Settlement  
19 Agreement ¶ 38, ECF No. 15-1.) If the packet is returned because of an incorrect address,  
20 the Settlement Administrator will make reasonable efforts to locate Class Members and re-  
21 send the notices. (Prelim. Settlement Mot. 27, ECF No. 15-1.) The proposed Notice  
22 explains:

23             (i) the nature of the action; (ii) the definition of class certified; (iii) the  
24 class claims, issues, or defenses; (iv) that class members may enter an  
25 appearance through counsel if the member so desires; (v) that the court  
26 will exclude from the class any member who requests exclusion; (vi)  
27 the time and manner for requesting exclusion; and (v) the binding effect  
28 of a class judgment on class members under Rule 23(c)(3).

(*Id.*) Having thoroughly reviewed the jointly drafted Notice, the Court finds that the method

1 and content of the Notice comply with Rule 23. Accordingly, the Court approves the  
2 Parties' proposed notification plan.

### 3 **CONCLUSION**

4 For the reasons stated above, the Court **GRANTS** the Parties' Joint Motion for  
5 Preliminary Approval of Class Action Settlement (ECF No. 15). The Court **ORDERS** as  
6 follows:

#### 7 **1. PRELIMINARY APPROVAL OF PROPOSED SETTLEMENT**

8 **AGREEMENT:** The Settlement Agreement is preliminarily approved as fair, reasonable,  
9 and adequate pursuant to Federal Rule of Civil Procedure 23(e).

10 **2. PRELIMINARY CLASS CERTIFICATION:** Pursuant to Federal Rule of Civil  
11 Procedure 23(b)(3), the action is preliminarily certified, for settlement purposes only, as a  
12 class action on behalf of the following Settlement Class Members with respect to the claims  
13 asserted in this Action:

14 **Settlement Class:** All non-exempt employees at BAE Systems San  
15 Diego Ship Repair Inc. who worked at any time during the period May  
16 27, 2012 through October 13, 2016.

#### 17 **3. CLASS REPRESENTATIVE, CLASS COUNSEL, AND SETTLEMENT**

18 **ADMINISTRATOR:** Pursuant to Federal Rule of Civil Procedure 23, the Court  
19 preliminarily certifies, for settlement purposes only, Plaintiff Eduardo Nunez as the Class  
20 Representative, and Alexander Dychter, of Dychter Law Offices, APC, and Walter Haines,  
21 of United Employees Law Group, PC, as Class Counsel. Additionally, the Court approves  
22 and appoints Rust Consulting, Inc. as the Settlement Administrator.

23 **4. NOTICE:** The Court approves the form and substance of the proposed notice set  
24 forth in the Settlement Agreement and the Notice attached as Exhibit A to the Settlement  
25 Agreement. (Settlement Agreement Ex. A, ECF No. 15-1.) The form and method for  
26 notifying the Class Members of the Settlement and its terms and conditions satisfies the  
27 requirements of Federal Rules of Civil Procedure 23(c)(2)(B) and 23(e). The Court finds  
28 that the Notice Procedure submitted by the Parties constitutes the best notice practicable

1 under the circumstances. As provided in the Settlement Agreement, the Settlement  
2 Administrator **SHALL** provide notice to the Class Members and respond to Class Member  
3 inquiries.

4 Within thirty (30) days of the date on which this Order is electronically docketed,  
5 the Parties **SHALL** disseminate the Notice in the form attached as Exhibit A to the  
6 Settlement Agreement and in the manner and form provided in the Settlement Agreement.

7 **5. FINAL APPROVAL HEARING:** Judge Sammartino shall conduct a Final  
8 Approval Hearing on July 27, 2017 at 1:30 p.m. at 221 W. Broadway, Courtroom 4A, 4th  
9 Floor, San Diego, CA 92101, to consider:

- 10 a. the fairness, reasonableness, and adequacy of the proposed  
11 settlement;  
12 b. Plaintiff's request for the award of attorneys' fees and costs;  
13 c. the Class Representative enhancement;  
14 d. dismissal with prejudice of the class action with respect to  
15 Defendant; and  
16 e. the entry of final judgment in this action.

16 At the Final Approval Hearing, the Parties shall also be prepared to update the Court on  
17 any new developments since the filing of the motion, including any untimely submitted  
18 opt-outs, objections, and claims, or any other issues as the Court deems appropriate.

19 The date and time of the Final Approval Hearing shall be included in the Notice to  
20 be mailed to all class members.

21 **6. MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT:**  
22 No later than twenty-one (21) days before the Final Approval Hearing, the Parties shall file  
23 a Motion for Final Approval of Class Action Settlement. The Motion shall include and  
24 address any objections received as of the filing date. In addition to the class certification  
25 and settlement fairness factors, the motion shall address the number of putative Settlement  
26 Class members who have opted out and the corresponding number of claims.

27 **7. APPLICATION FOR ATTORNEYS' FEES, COSTS, AND CLASS**  
28 **REPRESENTATIVE SERVICE AWARDS:** No later than twenty-one (21) days before

1 the Final Approval Hearing, Class Counsel shall file an application for attorneys' fees,  
2 costs, and class representative service awards. Class Counsel shall provide documentation  
3 detailing the number of hours incurred by attorneys in litigating this action, supported by  
4 detailed time records, as well as hourly compensation to which those attorneys are  
5 reasonably entitled. Class Counsel should address the appropriateness of any upward or  
6 downward departure in the lodestar calculation, as well as reasons why a percentage-of-  
7 the-fund approach to awarding attorney fees may be more preferable in this case. Class  
8 Counsel should be prepared to address any questions the Court may have regarding the  
9 application for fees at the Final Approval Hearing.

10 **8. MISCELLANEOUS PROVISIONS:** In the event the proposed settlement is not  
11 consummated for any reason, the conditional class certification shall be of no further force  
12 or effect. Should the settlement not become final, the fact that the Parties were willing to  
13 stipulate to class certification as part of the settlement shall have no bearing on, nor be  
14 admissible in connection with, the issue of whether a class should be certified in a non-  
15 settlement context.

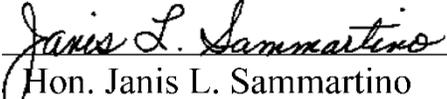
16 **9. SCHEDULE:** The Court orders the following schedule for further proceedings:

<b>Event</b>	<b>Date</b>
Defendant to Deliver Class List to Settlement Administrator	Within 7 days of the date on which this Order is electronically docketed
Settlement Administrator to Send Notice to Class Members	Within 30 days of the date on which this Order is electronically docketed
Last Day for Class Members to File Request for Exclusion from Settlement	No later than 60 days from the date of mailing the Notice
Last Day for Class Members to File Objections to the Settlement	No later than 60 days from the date of mailing the Notice

1 2 3	Last Day for Class Members to File Notice of Intention to Appear at Final Approval Hearing	No later than 60 days from the date of mailing the Notice
4 5	Parties to File Motion for Final Approval	No later than 21 days before the Final Approval Hearing
6 7 8	Class Counsel to File Motion for Attorneys' Fees and Costs and Incentive Fees	No later than 21 days before the Final Approval Hearing
9	Final Approval Hearing	July 27, 2017 at 1:30 p.m.

11 **IT IS SO ORDERED.**

12 Dated: February 13, 2017

13   
 14 Hon. Janis L. Sammartino  
 15 United States District Judge

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