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7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
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10 CARLOS LOPEZ and ANGEL ALEJO,
11 individually, and on behalf of all others
12 similarly situated,

Plaintiffs,

13 v.

14 MANAGEMENT AND TRAINING
15 CORPORATION, a Delaware
16 corporation,

Defendant.
17

Case No.: 17cv1624 JM(RBM)

**ORDER ON PLAINTIFFS’
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

18 Presently before the court is Plaintiffs’ Unopposed Motion for Preliminary Approval
19 of Class Action Settlement. A hearing on the motion was held on December 9, 2019. For
20 the reasons set forth on the record and as explained in more detail below, the motion is
21 **GRANTED.**

22 **I. Background**

23 Defendant Management and Training Corporation (“MTC”) maintains contracts
24 with various state governments and the federal government for the purpose of managing
25 prisons throughout the United States. At the time of the filing of the complaint, Plaintiffs
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1 were employed by MTC at Imperial Regional Detention facilities in California.¹ This
2 lawsuit arises out of MTC’s alleged failure to not properly compensate all Sergeants,
3 Detention Officers, and Correction Officers for all work performed.

4 On June 21, 2017, Plaintiffs filed suit in Imperial County Superior Court asserting
5 three claims: failure to pay straight time and overtime wages; violation California’s Unfair
6 Competition Law, CAL. BUS & PROF. CODE §17200, *et seq.*; and failure to provide accurate
7 wage statements. (Doc. No. 1-2.)

8 On June 22, 2017, Plaintiffs provided notice to the Labor and Workforce
9 Development Agency (“LWDA”) of similar allegations against Defendant. (Doc. No. 40-
10 2, Declarations of Alexander Dychter (“Dychter Decl.”), ¶ 6). MTC removed the case to
11 federal court on August 11, 2017. (Doc. No. 1.)

12 On April 10, 2018, the complaint was amended to include a Private Attorney General
13 Act (“PAGA”) violation. (Doc. No. 15.) On May 17, 2019, Plaintiffs provided an
14 Amended Notice to the LWDA. (Dychter Decl. at ¶ 6.)

15 Since the initiation of this lawsuit the parties have participated in two private
16 mediations, one before Mr. Joel M. Grossman, Esq. on December 11, 2018, and the second
17 before Mr. Steven W. Paul, Esq. on August 27, 2019. The second led to the proposed
18 settlement currently before the court.

19 **II. Settlement Agreement Terms**

20 On October 25, 2019, Plaintiffs filed the instant motion for preliminary approval of
21 the class action settlement. (Doc. No. 40.) The motion contained a proposed notice to
22 potential class members. (Doc. No. 40-2, Exhibit 1, at 51-56.)

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26 ¹ At the time of the filing of the First Amended Complaint, Lopez was employed as a
27 Sergeant and Alejo was employed as a Detention Officer. (Doc. No 15, ¶¶ 7, 8). Lopez is
28 still employed by MTC as a Sergeant at the Imperial Regional Detention Center but Alejo
left MTC’s employment in April 2019. (*See* Doc. No. 40-2 at 58-78, Second Amended
Complaint, ¶ 8.)

1 At the hearing, the court voiced its concerns regarding the guidance provided to
2 individuals wishing to opt-out of the class in the initial notice. Class counsel has
3 subsequently revised the notice and submitted it to the court. (Doc. No. 43, Exhibit 1,
4 “Notice” at 4-9.) The Notice has allayed the court’s earlier concerns.

5 The class is defined as follows:

6 all of Defendant’s hourly, non-exempt Sergeants, Detention Officers,
7 Correction Officers and other similarly titled officers, if any, who were
8 employed in the State of California at any time between June 21, 2013 through
9 the date of Preliminary Approval, but in no event later than November 30,
2019.

10 (Doc. No. 40-2, Exhibit 1, “Agreement” at ¶1.6.)

11 The Settlement Agreement requires MTC to pay a gross settlement amount of
12 \$3,500,000, allocated as follows: \$2,123,334² to the settlement members for their claims;
13 \$10,000 as an incentive award for Lopez; \$10,000 as an incentive award for Alejo;
14 \$1,166,666 to Plaintiffs’ counsel; \$25,000 in costs; \$100,000 to settlement of the PAGA
15 claim, \$75,000 of which is to be paid to the LWDA; and \$15,000 to the CPT Group, Inc.,
16 the Class Administrator for administration costs. (See Agreement, pgs. 19-25.) The
17 Agreement estimates 570 class members, and Plaintiffs’ counsel attests that the average
18 amount of gross settlement benefits each class member will recover is a \$3,856.00.
19 (Dychter Decl., ¶ 15.) In addition, the Agreement calls for the payment of \$750.00 to each
20 eligible member of Section 203 Sub-class for penalties allegedly owed under California
21 Labor Code Section 203, which will be deducted from the Class Settlement Amount prior
22 to determining the Net Settlement Amount. (Agreement, ¶ 4.2.1). The parties anticipate
23 approximately 100 Section 203 Sub-class members.

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26 ² This figure was calculated after deducting \$75,000 as the approximate amount to be
27 distributed to those participating in the Section 203 Sub-Class. The aggregate total
28 expected to be received by these Sub-Class Members is \$75,000, separate and apart from
each member’s *pro rata* shares of the remaining funds.

1 In exchange for these payments, the settlement agreement defined the Released
2 Claims as including:

3 any claims, causes of action, damages, wages, benefits, expenses, penalties,
4 debts, liabilities, demands, obligations, attorney's fees, costs, and any other
5 form of relief or remedy in law or equity, whether premised on statute,
6 contract, tort or other theory of liability under federal, state, or local law,
7 regulation, or ordinance, arising from the claims asserted in the First and
8 Proposed Second Amended Complaints or that reasonably could have been
9 asserted in the First and Proposed Second Amended Complaints, including
10 waiting time penalty claims under California Labor Code Section 203, against
11 the Released Parties based on the factual allegations of the First and Proposed
12 Second Amended Complaints, that accrued or accrue during the Settlement
13 Class Period, including, but not limited to, claims for failure to pay wages for
14 all hours worked (both straight-time and overtime wages); failure to provide
15 compliant meal breaks; failure to provide compliant rest breaks; failure to pay
16 all wages owed upon separation; failure to provide accurate and itemized
17 wage statements; unfair competition or unfair business practices under Cal.
18 Bus. & Prof. Code section 17200 et seq.; claims under California Labor Code
19 sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1194.2, 1197, 1198,
20 the applicable Industrial Welfare Commission Wage Orders, the California
21 Business and Professions Code section 17200 et seq., the PAGA; and claims
22 for restitution and other equitable relief, liquidated damages, waiting time
23 penalties, other compensation or benefits (collectively, the "Released
24 Claims"). This Release and Released Claims also cover all claims for interest,
25 attorneys' fees and costs related to the Action and the claims alleged or that
26 could have been alleged based on the factual allegations in the First and
27 Proposed Second Amended Complaints, including claims under California
28 Labor Code Section 203. The Settlement Class Members will be deemed to
have specifically acknowledged that this Release reflects a compromise of
disputed claims.

Settlement Class Members shall be deemed to have acknowledged and agreed
that California Labor section 206.5 is not applicable to the Parties hereto. That
section provides in pertinent part:

"An employer shall not require the execution of any release of a claim or right
on account of wages due, or become due, or made as an advance on wages to
be earned unless payment of those wages has been made."

The Released Claims do not include claims for workers' compensation
benefits or any of the claims that may not be released by law.

7.1.1 Settlement Class Members' Waiver of Rights under California Civil
Code Section 1542: With respect to Released Claims only, each Settlement

1 Class Member shall be deemed to have expressly waived and relinquished, to
2 the fullest extent permitted by law, the provisions, rights, and benefits they
3 may have had pursuant to 1542 of the California Civil Code, which provides
4 as follows:

5 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
6 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
7 FAVOR AT THE TIME OF EXECUTING THIS RELEASE, WHICH IF
8 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED
9 HIS OR HER SETTLEMENT WITH THE DEBTOR.

10 (Agreement at 32-33.) The Agreement has substantially similar release provisions
11 applicable to the named Plaintiffs. (Agreement, ¶¶ 7.2., 7.2.1)

12 **III. Preliminary Certification of Rule 23 Class**

13 Before approving the Settlement the court's "threshold task is to ascertain whether
14 the proposed settlement class satisfies the requirements of Rule 23(a) of the Federal Rules
15 of Civil Procedure applicable to class actions, namely: (1) numerosity, (2) commonality,
16 (3) typicality, and (4) adequacy of representation." *Hanlon v. Chrysler Corp.*, 150 F.3d
17 1011, 1019 (9th Cir. 1998). In the settlement context, the court "must pay undiluted, even
18 heightened, attention to class certification requirements." *Id.* In addition, the court must
19 determine whether class counsel is adequate (Fed. R. Civ. P. 23(g)), and whether "the
20 action is maintainable under Rule 23(b)(1), (2), or (3)." *In re Mego Fin. Corp. Sec. Litig.*,
21 213 F.3d 454, 462 (9th Cir. 2000) (quoting *Amchem Prod. v. Windsor*, 521 U.S. 591, 614
22 (1997)).

23 **A. Numerosity**

24 This requirement is satisfied if the class is "so numerous that joinder of all members
25 is impracticable." Fed. R. Civ. P. 23(a)(1). "A class greater than forty members often
26 satisfies this requirement ... " *Walker v. Hewlett-Packard Co.*, 295 F.R.D. 472, 482 (S.D.
27 Cal. 2013) (citing *Californians for Disability Rights, Inc. v. Cal. Dep't of Transp.*, 249
28 F.R.D. 334, 346 (N.D. Cal. 2008). Here, the parties estimate approximately 570 Class
Members. Joinder of all these potential plaintiffs would be impracticable. Accordingly,
this requirement has been met.

1 **B. Commonality**

2 This requirement is satisfied if “there are questions of law or fact common to the
3 class.” Fed. R. Civ. P. 23(a)(2). “To satisfy this commonality requirement, plaintiffs need
4 only point to a single issue common to the class.” *Vasquez v. Coast Valley Roofing, Inc.*,
5 670 F. Supp. 114, 1121 (E.D. Cal. 2009). Here, the commonality requirement is satisfied
6 because all of the class claims involve common questions of law and fact surrounding
7 Defendant’s purported failure to pay Class Members for all time worked, including time
8 automatically deducted for meal breaks, allegedly subjecting Class Members to a time
9 rounding policy that on its face was not fair and neutral, and which was allegedly
10 implemented in a manner that failed to compensate employees for all time under the
11 employer’s control, and a claimed failure to provide duty-free rest periods due to the nature
12 and work being performed by Class Members.

13 **C. Typicality**

14 This requirement is satisfied if “the claims or defenses of the representative parties
15 are typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). “The test of
16 typicality is whether other members have the same or similar injury, whether the action is
17 based on conduct which is not unique to the named plaintiffs, and whether other class
18 members have been injured by the same course of conduct.” *Hanon v. Dataproducts Corp.*,
19 976 F.2d 497, 508 (9th Cir. 1992) (internal quotation and citation omitted). Here, the
20 typicality requirement is satisfied because the claims of lead Plaintiffs and the class are
21 based on the claims that MTC’s policies violate various California labor laws. Moreover,
22 the Plaintiffs and the Class Members are alleged to have suffered the same injuries,
23 including the non-payment of overtime wages. Therefore, for purposes of settlement,
24 Plaintiffs have made an adequate showing of typicality.

25 **D. Adequacy**

26 The final Rule 23(a) requirement is that “the representative parties will fairly and
27 adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). This requires the
28 court address two questions: “(a) do the named plaintiffs and their counsel have any

1 conflicts of interest with other class members and (b) will the named plaintiffs and their
2 counsel prosecute the action vigorously on behalf of the class.” *In re Mego*, 213 F.3d at
3 462. A court certifying a class must consider: “(i) the work counsel has done in identifying
4 or investigating potential claims in the action; (ii) counsel’s experience in handling class
5 actions; (iii) counsel’s knowledge of the applicable law; and (iv) the resources that counsel
6 will commit to representing the class.” Fed. R. Civ. P. 23(g)(1)(A). The court may also
7 consider “any other matter pertinent to counsel’s ability to fairly and adequately represent
8 the interests of the class.” *Id.* at 23(g)(1)(B).

9 Here, there is no obvious conflict between Lopez’s and Alejo’s interests and those
10 of the class members. Similarly, Plaintiffs’ counsel appears to have extensive experience
11 in litigating wage and hour class action lawsuits. (*See* Doc. Nos. 40-2, Dychter Decl.; Doc.
12 No. 4-3, Declaration of Michael D. Singer (“Singer Decl.”); Doc. No. 40-4, Declaration of
13 Walter L. Haines (“Haines Decl.”).) Accordingly, the court finds this element satisfied for
14 the purposes of preliminary approval.

15 **E. Predominance and Superiority**

16 “In addition to meeting the conditions imposed by Rule 23(a), the parties seeking
17 class certification must show that the action is maintainable under Fed. R. Civ. P 23(b)(1),
18 (2) or (3).” *Hanlon*, 150 F.3d at 1022. “Rule 23(b)(3) permits a party to maintain a class
19 action if . . . the court finds that the questions of law or fact common to class members
20 predominate over any questions affecting only individual members, and that a class action
21 is superior to other available methods for fairly and efficiently adjudicating the
22 controversy.” *Conn. Ret. Plans & Trust Funds v. Amgen Inc.*, 660 F.3d 1170, 1173 (9th
23 Cir. 2011), *aff’d* 133 S. Ct. 1184 (2013) (citing Fed. R. Civ. P. 23(b)(3)). The
24 “predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant
25 adjudication by representation.” *Hanlon*, 150 F.3d at 1022-23 (quoting *Amchen Prods,*
26 *Inc.*, 521 U.S. at 623). An examination into whether there are “legal or factual questions
27 that qualify each class member’s case as a genuine controversy” is required. *Id.* The
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1 superiority inquiry “requires determination of whether the objectives of a particular class
2 action procedure will be achieved in a particular case.” *Id.* at 123.

3 Here, all of the Class Members were allegedly subject to Defendant’s failure to pay
4 them for time worked as a result of Defendant’s labor policies. Resolution of common
5 questions regarding, for example, whether Defendant failed to pay Class members for all
6 time worked and whether Defendant failed to provide compliant meal and rest breaks, are
7 applicable to all members of the class. Thus, although the degree of the underpayment of
8 wages may vary between members, the class is “sufficiently cohesive to warrant
9 adjudication by representation.” *Local Joint Exec. Bd of Culinary/Bartender Trust Fund*
10 *v. Las Vegas Sands, Inc.* 244 F.3d 1152, 1162 (9th Cir. 2001). In sum, the legal and factual
11 questions common to each Class member’s claim predominate over any questions affecting
12 individual Class members. The relatively limited potential recovery for the Class Members
13 as compared with the costs litigating the claims also support the preliminary conclusion
14 that a class action is superior to other methods for adjudicating this controversy.

15 In accordance with the above, for purposes of settlement, Lopez and Alejo have
16 satisfied the requirements for certification of a class under Rule 23.

17 **IV. Preliminary Approval of Settlement**

18 At the preliminary approval stage, the Court may grant preliminary approval of a
19 settlement if the settlement: (1) appears to be the product of serious, informed, non-
20 collusive negotiations; (2) has no obvious deficiencies; (3) does not improperly grant
21 preferential treatment to class representatives or segments of the class; and (4) falls within
22 the range of possible approval.” *Sciortino v. PepsiCo, Inc.*, No. 14-CV-00478-EMC, 2016
23 WL 3519179, at *4 (N.D. Cal. June 38, 2016) (quoting *Harris v. Vector Mktg. Corp.*, No.
24 C-08-5198 EMC, 2011 WL 1627973, at *7 (N.D. Cal. Apr. 29, 2011). “At the preliminary
25 approval stage, a full fairness analysis is unnecessary.” *Zepeda v. Paypal, Inc.*, No. C 10-
26 1668 SBA, 2014 WL 718509, at *4 (N.D. Cal. Feb. 24, 2014) (internal quotation marks
27 and citation omitted). “Closer scrutiny is reserved for the final approval hearing.”
28 *Sicortino*, 2016 WL 3519179, at *4.

1 Federal Rule of Civil Procedure 23(e) provides that “[t]he claims, issues, or defenses
2 of a certified class may be settled, voluntarily dismissed, or compromised only with the
3 court’s approval.” Fed. R. Civ. P. 23(e). “Adequate notice is critical to court approval of
4 a class settlement under Rule 23(e).” *Hanlon*, 150 F.3d at 1025. The Rule also “requires
5 the district court to determine whether a proposed settlement is fundamentally fair,
6 adequate and reasonable.” *Id.* at 1026. In making this determination, the court is required
7 to “evaluate the fairness of a settlement as a whole, rather than assessing its individual
8 components.” *Lane v. Facebook, Inc.*, 696 F.3d 811, 818-19 (9th Cir. 2012). Because a
9 “settlement is the offspring of compromise, the question we address is not whether the final
10 product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from
11 collusion.” *Hanlon*, 150 F.3d at 1027.

12 In assessing a settlement proposal, the district court is required to balance a number
13 of factors, namely:

14 the strength of the plaintiff’s case; the risk, expense, complexity, and likely
15 duration of further litigation; the risk of maintaining class action status
16 throughout trial; the amount offered in settlement; the extent of discovery
17 completed and the stage of the proceedings; the experience and views of
18 counsel; the presence of governmental participant; and the reaction of the
19 class members to the proposed settlement.

20 *Id.* at 1026. When reviewing a proposed settlement, the court’s primary concern “is the
21 protection of those class members, including the named plaintiffs, whose rights may not
22 have been given due regard by the negotiating parties.” *Officers for Justice v. Civil Serv.*
23 *Comm’n of City & Cnty. Of S.F.*, 688 F.2d 615, 624 (9th Cir. 1982). Ultimately, “[i]n most
24 situations, unless the settlement is clearly inadequate, its acceptance and approval are
25 preferable to lengthy and expensive litigation with uncertain results.” *Nat’l Rural*
26 *Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004).

27 In the motion, class counsel argues that the gross settlement amount reflects a very
28 “good result” and that Plaintiffs’ counsel has calculated Defendant’s potential liability to
be approximately \$9 million and the gross settlement amount is for \$3.5 million. The actual

1 recovery for the class, minus attorney fees, results in between 20-25% of Defendant's
2 potential exposure. Class counsel are experienced class action attorneys in the labor and
3 employment, wage and hour arena and the settlement has been reached following two
4 mediations before independent third-parties. (*See* Dychter Decl., Singer Decl., Haines
5 Decl.) In support of the settlement, counsel point to the risk associated with the uncertainty
6 accompanying continued litigation, the fact that class certification has yet to be obtained
7 and the various defenses available to MTC. The average amount of gross settlement
8 benefits recovered by Class Members under the Settlement is approximately \$3,856. Based
9 on the court's experience with wage and hour class actions, and the accompanying
10 declarations from experienced class counsel, the court preliminarily approves the
11 settlement.

12 **V. Conclusion and Order**

13 In light of the foregoing, it is hereby ORDERED as follows:

14 1. The court finds on a preliminary basis that the provisions of the Joint
15 Stipulation and Settlement Agreement (hereinafter "Agreement"), filed with the court as
16 Exhibit 1 to the Declaration of Alexander I. Dychter (Doc. No. 40-2), are fair, just,
17 reasonable, and adequate and therefore, meet the requirements for preliminary approval.

18 2. For purposes of this Order, the court adopts all defined terms as set forth in
19 the Agreement.

20 3. The court conditionally certifies, for settlement purposes only, the following
21 Settlement Class described in the Agreement as: "all of Defendant's hourly, non-exempt
22 Sergeants, Detention Officers and other similarly titled officers, if any, who were employed
23 in the State of California at any time between June 21, 2013 through the date of Preliminary
24 Approval, but in no event later than November 30, 2019."

25 4. The court appoints, for settlement purposes only, Plaintiffs Carlos Lopez and
26 Angel Alejo as representatives for the Settlement Class.

27 5. The court preliminarily appoints Alexander I. Dychter of Dychter Law
28 Offices, APC, Michael D. Singer of Cohelan Khoury & Singer, and Walter L. Haines, of

1 United Employees Law Group, PC as Class Counsel for purposes of settlement.

2 6. The court appoints CPT Group, Inc. as the Settlement Administrator. The
3 Settlement Administrator shall disseminate the Class Notice, supervise and carry out the
4 settlement administration procedures in the Agreement, including, but not limited to,
5 distributing and providing the class notice, receiving and examining claims, calculating
6 claims against the Common Fund, preparing and issuing all disbursements of the Common
7 Fund to Authorized Claimants, and handling inquiries from Settlement Class Members.
8 All reasonable fees and costs of the Settlement Administrator shall be paid from the
9 Common Fund.

10 7. In compliance with the terms of the Agreement, Class Counsel shall provide
11 the LWDA with a copy of the proposed settlement in accordance with California Labor
12 Code.

13 8. In compliance with the Class Action Fairness Act, 28 U.S.C. § 1715, and as
14 set forth in the Agreement, Defendant, themselves or through their designee, are ordered
15 to serve written notice of the proposed settlement on the U.S. Attorney General and the
16 appropriate California state official, along with the appropriate state official in every state
17 where a Class Member resides, unless such notice has already been served.

18 9. If they have not already done so, Defendant, within seven (7) business days
19 of this Order granting preliminary approval, shall provide a spreadsheet of all Class
20 Members including: (i) full name; (ii) last known home mailing address; (iii) telephone
21 number (if available); (iv) Social Security Number; (v) dates of employment with
22 Defendant; and (vi) the number of active Worksheets worked during the Class Period, in
23 order for the Settlement Administrator to be able to calculate each Class Member's
24 respective share of the Net Settlement Amount (hereinafter the "Class List"). The contents
25 of the Class List are confidential and shall not be shared with third parties other than the
26 Settlement Administrator and Class Counsel as needed.

27 10. The Class Notice, filed with the court as Exhibit 1 to the Declaration of
28 Alexander I. Dychter (Doc. No. 43), is approved.

1 The Notice will be sent by the Settlement Administrator to all Class Members by
2 first class mail within seven (7) business days of receipt of the Class List from Defendant.
3 Prior to mailing the Notice, the Settlement Administrator shall process the Class List
4 through the National Change of Address Database. It shall be conclusively presumed that
5 if the Notice is not returned as “undeliverable,” the Class Member received the Notice
6 packet. With respect to Notice packets that are returned as undeliverable, if a forwarding
7 address is provided by the USPS, the Settlement Administrator shall re-mail the Notice
8 within three (3) business days. If a Notice is “undeliverable” and no forwarding address is
9 provided, the Settlement Administrator shall implement a skip trace in order to obtain
10 updated address information and shall re-mail the Notice to those Class Members for whom
11 a new address is located. A skip trace shall be performed only once per Class Member by
12 the Settlement Administrator and must be completed no later than seven (7) calendar days
13 prior to the notice period deadline. Upon completion of these steps, the Settlement
14 Administrator shall be deemed to have satisfied its obligations to provide the Notice to the
15 Class Member. The Class Member shall remain a member of the Settlement Class and
16 Section 203 SubClass (if applicable) and shall be bound by this Agreement and any Court
17 order regarding the same, and the Final Judgment, regardless of whether he or she actually
18 receives the Notice.

19 11. The court will hold a Final Approval Hearing on **April 2, 2020** at **10:00 a.m.**
20 in the Courtroom of Honorable Jeffrey T. Miller, United States District Court for the
21 Southern District of California, Courtroom 5D (5th Floor – Schwartz), 221 West
22 Broadway, San Diego, CA 92101, for the following purposes:

- 23 a. Finally determining whether the Class meets all applicable requirements
24 of Rule 23 of the Federal Rules of Civil Procedure and whether the Class
25 should be certified for the purpose of effectuating the Settlement;
- 26 b. Finally determining whether the proposed Settlement is fundamentally
27 fair, reasonable, and adequate, and in the best interests of the Settlement
28 Class Members and should be approved by the court;

- c. Considering the application of class counsel for an award of attorneys' fees and costs, as provided in the Agreement;
- d. Considering the applications of the named Plaintiffs for a class representative incentive award as provided in the Agreement;
- e. Considering whether the order granting final approval of the class action settlement and judgement, as provided under the Agreement, should be entered, dismissing the Action with prejudice and releasing the Released Claims against the Released Parties; and
- f. Ruling upon such other matters as the court may deem just and appropriate.

12. The court may adjourn the Final Approval Hearing and later reconvene such hearing without further notice to the Class Members.

13. Attendance at the Final Approval Hearing is not necessary. Settlement Class Members need not appear at the hearing or take any action to indicate their approval of the proposed class action Settlement.

14. Class counsel shall file a motion for final approval of the Settlement no later than March 9, 2020. Any request by class counsel for an award of attorneys' fees and expenses shall be filed February 3, 2020, and that request shall be accompanied by supporting evidence to allow Class Members an opportunity to object to the fee motion itself before deciding whether to exclude themselves or object.

15. Each Settlement Class Member will have forty-five (45) days after the date on which the Settlement Administrator mails the Class Notice to object to the Settlement by serving on the Settlement Administrator, Class Counsel, and Counsel for Defendant and filing with the Court, by the forty-five (45) day deadline, a written objection to the Settlement.

16. Each Settlement Class Member who wishes to Opt-Out and be excluded from the settlement shall mail a letter to the Settlement Administrator. The written request must: (a) state the Class Member's full legal name, home address, telephone number, last four digits of their Social Security Number; (b) include the words "I want to opt-out"; (c) be

1 addressed to the Settlement Administrator; (d) be signed by the Class Member or their
2 lawful representative; and (e) be postmarked to the Settlement Administrator no later than
3 45 days after the notice packet is mailed.

4 17. Each Settlement Class Member who wishes to object to the settlement must
5 do so in writing. The objection must: (a) state the Class Member's full legal name, home
6 address, telephone number, last four digits of their Social Security Number; (b) include the
7 words "Notice of Objection" or "Formal Objection", state in clear and concise terms, the
8 legal and factual arguments supporting the objection, and include a list identifying any
9 witness(es) the objector may call to testify at the Fairness Hearing, as well as true and
10 correct copies of any exhibit(s) the objector intends to offer (a "Written Objection Notice");
11 (c) be directed to the Hon. Jeffrey T. Miller, United States District Court – Southern District
12 of California, 221 West Broadway, Suite 5190, San Diego, California 92101, and must
13 reference case number 3:17-cv-01624-JM-RBM; (d) be sent to the Settlement
14 Administrator, Class Counsel, and Counsel for Defendant; e) be signed by the Class
15 Member or their lawful representative; and (f) be postmarked to the Settlement
16 Administrator no later than 45 days after the notice packet is mailed.

17 18. Pending the final determination of the fairness, reasonableness, and adequacy
18 of the proposed Settlement, no Settlement Class Member may prosecute, institute,
19 commence, or continue any lawsuit (individual action or class action or file any claims
20 with the California Division of Labor Standards Enforcement Division) with respect to the
21 Released Claims against MTC.

22 19. If the Agreement is not finally approved for any reason, then this Order shall
23 be vacated, the Agreement shall have no force and effect, and the Parties' rights and
24 defenses shall be restored, without prejudice, to their respective positions as if the
25 Agreement had never been executed and this Order never entered.

26 20. The parties may further modify the Agreement prior to the Final Approval
27 Hearing so long as such modifications do not materially change the terms of the Settlement
28 provided thereunder. The court may approve the Settlement Agreement with such

1 modifications as may be agreed to by the parties, if appropriate, without further notice to
2 the Settlement Class.

3 21. No later than **twenty-eight (28) days** prior to the Final Approval hearing date,
4 the Settlement Administrator shall file an affidavit and serve a copy on class counsel and
5 defense counsel, attesting that Notice was disseminated as required by the terms of the
6 Agreement or as ordered by the court. This affidavit shall also inform the court of any
7 requests for exclusion from the Class and objections or other reactions from Class Members
8 received by the Settlement Administrator.

9 22. The court orders that the proposed Second Amended Complaint attached as
10 Exhibit 3 to the Declaration of Alexander I. Dychter filed in support of Plaintiffs' Motion
11 for Preliminary Approval of Class Action Settlement be deemed filed this date and shall
12 become the operative Complaint in this action.³

13 23. The Court retains continuing and exclusive jurisdiction over the action to
14 consider all further matters arising out of or connected with the settlement, including the
15 administration and enforcement of the Agreement.

16 IT IS SO ORDERED.

17 Dated: December 13, 2019



26 ³ Accordingly, Plaintiffs' Motion for Leave to File a Second Amended Complaint (Doc.
27 No. 33) is DENIED WITHOUT PREJUDICE and as MOOT. Furthermore, the pending
28 Motion to Certify Class (Doc. No. 34) is also DENIED WITHOUT PREJUDICE and as
MOOT.