

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

LUIS LOPEZ YANEZ; KAYASONE  
MUONGKHOT; and JULIO  
RUBIO, *on behalf of themselves and  
all others similarly situated,*  
Plaintiffs,  
v.  
HL WELDING, INC.,  
Defendant.

Case No.: 20cv1789-MDD

**ORDER GRANTING PLAINTIFFS’  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION,  
FLSA COLLECTIVE ACTION AND  
PRIVATE ATTORNEYS’  
GENERAL ACT SETTLEMENT**

[ECF No. 23]

Before the Court is Plaintiffs’ Motion for Preliminary Approval of Class Action, Fair Labor Standards Act (“FLSA”) Collective Action, and Private Attorneys’ General Act (“PAGA”) Settlement. (ECF No. 23). The motion is unopposed by Defendant HL Welding, Inc. (“Defendant” or “HL Welding”). (ECF No. 26). Plaintiffs submitted the Joint Stipulation of Class Action and Collective Action Settlement and Release (“Settlement Agreement”) to the Court for review. Having considered the briefs, Settlement Agreement, and the relevant statutory and case law, the Court **GRANTS** Plaintiffs’ Motion.

**I. INTRODUCTION**

On June 2, 2021, Plaintiffs filed a First Amended Complaint (“FAC”),

1 which is the operative complaint in this case. (ECF No. 19). Plaintiffs allege:  
2 (1) failure to pay overtime wages under California Labor Code §§ 510, 1194;  
3 (2) failure to furnish accurate wage statements under California Labor Code  
4 §§ 226, 226.3; (3) waiting time penalties under California Labor Code §§ 201-  
5 2032; (4) unfair competition under California Business and Professions Code  
6 § 17200, *et seq.*; (5) civil penalties under PAGA, California Labor Code § 2698,  
7 *et seq.*; and (6) failure to pay overtime wages under FLSA, 29 U.S.C. § 207.  
8 (*Id.*).

9 The gravamen of Plaintiffs' complaint in this action and the Muongkhot  
10 Action is that Defendant "has used a pay scheme to deprive Tradespeople of  
11 wages by paying a '*per diem*' in addition to hourly wages, but not including  
12 the *per diem* rate in its calculation of overtime pay." (*Id.*). As such,  
13 Defendant has allegedly not paid overtime using the proper regular rate of  
14 pay as required by the FLSA and California law. (*Id.*). Additionally,  
15 Plaintiffs allege derivative claims that Defendant failed to provide accurate  
16 wage statements, "and that certain Tradespeople . . . are due waiting time  
17 and PAGA penalties." (*Id.*).

18 Plaintiffs seek preliminary approval of an \$858,000 non-reversionary  
19 settlement with HL Welding to settle the California and federal overtime  
20 pay, and related claims on behalf of a class of Tradespeople ("Settlement  
21 Class Members"), as defined more specifically below. The Court preliminarily  
22 finds the proposed settlement is fair, reasonable and adequate.

## 23 **II. BACKGROUND**

### 24 **Litigation History**

25 On October 10, 2019, Plaintiff Muongkhot filed a class action complaint  
26 against HL Welding in San Diego Superior Court ("*Muongkhot* Action"). The  
27 initial complaint was filed on behalf of a putative class of Welders, Ship

1 Fitters, and other similarly situated employees employed in California on or  
2 after October 10, 2015. Shortly after filing, Defendant disclosed that many  
3 members of the putative class signed arbitration agreements with HL  
4 Welding that included a class action waiver.

5 On February 13, 2020, Plaintiff Julio Rubio initiated the 65-day  
6 administrative exhaustion requirements with the California Labor and  
7 Workforce Development Agency (“LWDA”) that were required before Mr.  
8 Rubio could join the *Muongkhot* Action as a representative plaintiff to assert  
9 a claim under PAGA. Plaintiffs then filed an amended complaint in the  
10 *Muongkhot* Action wherein Rubio is named as a plaintiff and proxy for the  
11 state of California.

12 In July 2020, following initial discovery and meeting and conferring  
13 with Defendant’s counsel, Plaintiff sought a stipulation to amend the  
14 operative complaint in the *Muongkhot* Action. Defendant declined to  
15 stipulate, requiring Plaintiffs to file a Motion for Leave to Amend in the  
16 *Muongkhot* Action to add additional plaintiffs and provide an expanded class  
17 definition explicitly including all potential class positions in addition to  
18 Welders and Shipfitters.

19 On September 11, 2021, Plaintiff Yanez initiated this action. (ECF No.  
20 1). Plaintiffs filed the First Amended Complaint on June 2, 2021, which  
21 added included claims on behalf of an expanded statewide class, a nationwide  
22 collective action, and penalties under PAGA. (ECF No. 19).

23 The parties attended a mediation on March 24, 2021 with mediator  
24 Scott Markus. The mediation involved discussion of settlement of both this  
25 Action and the *Muongkhot* Action. The parties entered into a signed  
26 Memorandum of Understanding (“MOU”) to settle all of the class and PAGA  
27 claims in both cases. Prior to mediation, Defendant HL Welding shared with

1 Plaintiffs' counsel detailed data regarding the class claims. HL Welding  
2 provided supplemental data to Plaintiffs' counsel on June 2, 2021 that  
3 confirmed the relevant workweeks and pay periods that are the focus of the  
4 disputes herein, and which also confirmed when class members worked  
5 overtime hours that would be subject to additional compensation if Plaintiffs  
6 prevailed on the merits. The parties spent the next two months negotiating  
7 the terms of the full settlement agreement presented in the instant motion,  
8 including the Settlement Notice to the class.

### 9 **Settlement Agreement**

10 In return for a release of all claims in this action, the *Muongkhot*  
11 Action, and any related claims arising from the same facts averred in the  
12 operative complaint, Defendant agreed to create a non-reversionary \$858,000  
13 Gross Settlement Amount ("GSA"). Defendant will separately pay the  
14 "employer's share" of employment taxes (FICA, FUTA, SDI) on any payments  
15 classified as W-2 income or wages, over and above the GSA. (ECF No. 23 at  
16 14). Plaintiffs request, and Defendant consents, that the fund be distributed  
17 as follows:

- 18 (1) Up to \$12,000 for Settlement Administration costs payable to  
19 Simpluris, Inc.
- 20 (2) Up to one third (1/3) of the GSA or \$286,000 for reasonable  
21 attorneys' fees.
- 22 (3) Up to \$10,000 to reimburse Class Counsel for actual documented  
23 litigation expenses.
- 24 (4) Class representative service awards not to exceed \$15,000 paid to  
25 Plaintiffs Lopez Yanez, Kayasone Muongkhot and Julio Rubio  
26 (\$5,000 each) for their services to the class and risks incurred.
- 27 (5) \$100,000 for payment of PAGA penalties, with 75% of this

1 payment, or \$75,000, sent to the LWDA and 25% of this payment,  
2 or \$25,000, distributed to “PAGA Recipients,” as defined by the  
3 Settlement Agreement.

4 After these deductions, the remaining sum, or Net Settlement Amount,  
5 would be distributed to Class members on a pro-rata basis (based on  
6 workweeks in the applicable statutory periods). (ECF No. 23 at 16).  
7 Plaintiffs’ counsel estimates the Net Settlement Amount to be \$435,000.  
8 (*Id.*).

9 Settlement Class Members will not be required to file claims in order to  
10 receive their share of the Net Settlement Fund, but will have the opportunity  
11 to correct any errors in Defendant’s records to their numbers of weeks worked  
12 as Tradespeople in California. (*Id.*).

### 13 **Class and Subclass Definitions**

14 The proposed Settlement Class and Subclass definitions are as follows:

15 “Settlement Class” and “Settlement Class Members” shall mean all  
16 current and former employees of HL Welding who were employed as Welders,  
17 Ship Fitters, Pipefitters, Sheet Metal workers, Electricians, Machinists,  
18 Riggers and Tackers (collectively “Tradespeople”) at any time from October 1,  
19 2015 and June 30, 2021 and who have not signed arbitration agreements  
20 with class/collective action waivers with HL Welding and who fall within one  
21 of the following two subclasses:

22 California Subclass: All current and former employees of HL Welding  
23 who were employed as Welders, Ship Fitters, Pipefitters, Sheet Metal  
24 workers, Electricians, Machinists, Riggers and Tackers by Defendant in  
25 California at any time between October 1, 2015 and June 30, 2021 (the  
26 “California Subclass Period”) and who have not signed arbitration  
27 agreements with class/collective action waivers with HL Welding.

1        FLSA Subclass: All current and former employees of HL Welding who  
2 were employed as Welders, Ship Fitters, Pipefitters, Sheet Metal workers,  
3 Electricians, Machinists, Riggers and Tackers by Defendant in states other  
4 than California at any time between September 15, 2017 and June 30, 2021  
5 (the “FLSA Subclass Period”) and who have not signed arbitration  
6 agreements with class/collective action waivers with HL Welding.

7        The proposed class and subclass definitions are different from the  
8 definitions in the operative complaint in the following respects: the revised  
9 definitions (1) finalize the Class Period end date of June 30, 2021, (2) create  
10 two subclasses, and (3) clarify that only Tradespeople who did not sign  
11 arbitration agreements are included in the class settlement and subject to the  
12 class release. That is, any HL Welding employee who signed an arbitration  
13 agreement retains his/her right to bring an individual arbitration for the  
14 overtime and related claims at issue in this litigation.

### 15        **Class Representative and Class Counsel**

16        In certifying the settlement class, Plaintiffs request the Court appoint  
17 Plaintiffs Lopez Yanez, Kayasone Muongkhot and Julio Rubio as the class  
18 representatives and their counsel, David Pogrel and Aaron Kaufmann,  
19 Leonard Carder, LLP, as class counsel.

### 20        **Notice Procedure**

21        The parties agreed on Simpluris, Inc. as the Settlement Administrator.  
22 After updating the database provided by Defendant through the National  
23 Change of Address database, the Settlement Administrator will mail the  
24 Settlement Notice and Estimated Share Form (collectively “Notice Packet”) to  
25 each class member. The Notice Packet shall inform Settlement Class  
26 Members of what their estimated settlement amount is, as well as the  
27 number of Settlement Class Members credited workweeks during the

1 relevant period covered by the settlement. The Settlement Notice will inform  
2 the Class Members that they have four options: (1) do nothing and receive the  
3 estimated amount set forth in the Notice; (2) dispute the amount listed in the  
4 Notice; (3) object to the Settlement; or (4) exclude himself or herself from the  
5 Settlement. Because this is not a claims-made settlement, Class Members  
6 will not be required to make a submission to participate in the settlement.

### 7 **III. DISCUSSION**

8 Plaintiffs' motion seeks preliminary approval of a class action  
9 settlement, an FLSA collective action settlement, and a PAGA settlement.  
10 The Court addresses each in turn.

#### 11 **A. Certification of the Class for Purposes of Settlement**

12 Federal Rule of Civil Procedure 23 establishes four prerequisites for  
13 class certification: (1) numerosity; (2) commonality; (3) typicality; and (4)  
14 adequacy of representation. Fed. R. Civ. P. 23(a). Under Rule 23(b)(3),  
15 common questions must predominate over individual questions and the class  
16 action device must be "superior to other available methods for fairly and  
17 efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). At the  
18 preliminary approval stage, the court determines whether it "will *likely* be  
19 able to . . . certify the class for purposes of judgment on the proposal" for class  
20 settlement. Fed. R. Civ. P. 23(e)(1)(B) (emphasis added).

##### 21 *1. Numerosity*

22 The numerosity requirement under Rule 23(a)(1) is met if "the class is  
23 so numerous that joinder of all members is impracticable." Fed. R. Civ. P.  
24 23(a)(1). "[C]ourts generally find that the numerosity factor is satisfied if the  
25 class comprises 40 or more members and will find that it has not been  
26 satisfied when the class comprises 21 or fewer." *Celano v. Marriott Int'l, Inc.*,  
27 242 F.R.D. 544, 549 (N.D. Cal. 2007). The parties have identified 75

1 California Subclass Members. (SA ¶ 4(a)); (ECF No. 23 at 14). Joinder of  
2 this number of plaintiffs is impractical. The numerosity requirement is  
3 satisfied.

#### 4 2. Commonality

5 Rule 23(a)(2) requires the existence of “questions of law or fact common  
6 to the class.” Fed. R. Civ. P. 23(a)(2). Commonality is established if plaintiffs’  
7 and class members’ claims “depend upon a common contention . . . capable of  
8 class-wide resolution—which means that determination of its truth or falsity  
9 will resolve an issue that is central to the validity of each one of the claims in  
10 one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011).

11 Plaintiffs’ complaint alleges questions common to the entire class for all  
12 claims, including whether: “(1) class members have been subject to the same  
13 ‘per diem’ payment plan; (2) class members are entitled to overtime  
14 protections of the California Labor Code and FLSA; (3) HL Welding has  
15 violated its legal obligations under various provisions of the California Labor  
16 Code and FLSA; and (4) HL Welding’s actions constitute violations of the  
17 Unfair Competition Law.” (ECF No. 23 at 21). As such, the proposed class  
18 meets the commonality requirement.

#### 19 3. Typicality

20 Rule 23(a)(3)’s typicality requirement will be satisfied when “the claims  
21 or defenses of the representative parties are typical of the claims or defenses  
22 of the class.” Fed. R. Civ. P. 23(a)(3). The named plaintiff must be a member  
23 of the class they seek to represent and must “possess the same interest and  
24 suffer the same injury” as putative class members. *Gen. Tel. Co. of Sw. v.*  
25 *Falcon*, 457 U.S. 147, 156 (1982) (internal quotation marks omitted). The  
26 representative claims are typical if they are “reasonably co-extensive with  
27 those of absent class members,” though they “need not be substantially



1 identical.” *Parsons v. Ryan*, 754 F.3d 657, 685 (9th Cir. 2014) (quoting  
2 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998)). “Plaintiffs’  
3 claims arise out of the same factual and legal circumstances as the claims of  
4 other Class members: like all Class Members, Plaintiffs were subject to HL  
5 Welding’s ‘per diem’ compensation and have been underpaid according to the  
6 California and federal overtime laws and did not receive accurate wage  
7 statements.” (ECF No. 23 at 21). Additionally, “Class Members no longer  
8 providing services to HL Welding, like Plaintiffs, are entitled to waiting time  
9 penalties and other penalties.” (*Id.*). The Court finds that Plaintiffs have  
10 satisfied the typicality requirement.

#### 11 4. Adequacy

12 Under Rule 23(a)(4), representative parties must be able to “fairly and  
13 adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). In  
14 analyzing whether Rule 23(a)(4) has been met, the Court must ask two  
15 questions: “(1) do the named plaintiffs and their counsel have any conflicts of  
16 interest with other class members and (2) will the named plaintiffs and their  
17 counsel prosecute the action vigorously on behalf of the class?” *Evon v. Law*  
18 *Offices of Sidney Mickell*, 688 F.3d 1015, 1031 (9th Cir. 2012) (internal  
19 quotation marks and citation omitted). The adequacy of representation  
20 requirement is designed to deny certification in instances of “actual fraud,  
21 overreaching, or collusion.” *In re Bluetooth Headset Prods. Liab. Litig.*, 654  
22 F.3d 935, 948 (9th Cir. 2011) (internal quotation marks and citation omitted).

23 There is no reason to believe that the Class Representatives or Class  
24 Counsel have any conflicts of interest with the proposed Settlement Class  
25 Members. There also is no reason to believe that the Class Representatives  
26 or Class Counsel have failed to vigorously investigate and litigate this case.  
27 Plaintiffs have retained competent counsel, who have “actively identified,

1 investigated and prosecuted the claims that are the subject of this  
2 Settlement; they have decades of extensive experience in class action  
3 litigation, including wage-and-hour claims of the type asserted here, have  
4 been appointed class counsel in numerous other cases; and have  
5 demonstrated that they have the ability and resources to vigorously pursue  
6 the claims asserted in this litigation.” (ECF No. 23 at 22). Accordingly, the  
7 Class Representatives and Class Counsel adequately represent the proposed  
8 Settlement Class Members.

9       5.     *Predominance and Superiority*

10       Finally, to certify a class under Rule 23(b)(3), the Court must find “that  
11 the questions of law or fact common to class members predominate over any  
12 questions affecting only individual members, and that a class action is  
13 superior to other available methods for fairly and efficiently adjudicating the  
14 controversy.” Fed. R. Civ. P. 23(b)(3). Predominance tests “whether proposed  
15 classes are sufficiently cohesive to warrant adjudication by representation.”  
16 *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016) (internal  
17 quotation marks and citation omitted). For settlement purposes, a class  
18 settlement is superior to other available methods for a fair resolution of the  
19 controversy because the class mechanism will reduce litigation costs and  
20 promote greater efficiency. In a class action settlement, the Court need not  
21 address whether the case, if tried, would present issues of manageability  
22 under Rule 23(b)(3)(D). *Amchem Prods. v. Windsor*, 521 U.S. 591, 620 (1997).

23       In this case, liability hinges on whether Defendant subjected Class  
24 Members to the same “per diem” payment plan, whether Class Members are  
25 entitled to overtime protections, whether Defendant violated its legal  
26 obligations under California’s Labor Code and FLSA, and whether  
27 Defendant’s conduct violates the Unfair Competition Law. (See ECF No. 23

1 at 21). As a result, Plaintiffs and the Class members share several common  
2 questions of fact and law that are central to Plaintiffs' alleged injuries and  
3 that predominate over individualized issues.

4 If the Settlement Class Members' claims were treated on an individual  
5 basis, rather than a class basis, several cases would be filed and each would  
6 result in a similar outcome. Further, the individual cases would consume a  
7 significant amount of the Court's and parties' resources. Also, it is likely that  
8 the Settlement Class Members would not pursue litigation on an individual  
9 basis due to the high cost of pursuing their individual claims. Thus, a class  
10 action is the superior vehicle to adjudicate the dispute.

#### 11 6. *Conclusion*

12 For the reasons stated above, the Court conditionally certifies the class  
13 for settlement purposes only.

#### 14 **B. Certification of the FLSA Collective Action**

15 Plaintiffs also request that this matter be certified as a collective action  
16 under the FLSA. (SA ¶ 55). Under the FLSA, an employee may bring a  
17 collective action on behalf of other similarly situated employees. *See* 29  
18 U.S.C. § 216(b). Thus, a district court's approval of preliminary certification  
19 of an FLSA collective action is "conditioned on a preliminary determination  
20 that the collective as defined in the complaint satisfies the 'similarly situated'  
21 requirement of section 216(b)." *Campbell v. City of Los Angeles*, 903 F.3d  
22 1090, 1109 (9th Cir. 2018). A party plaintiff and putative collective members  
23 are "similarly situated, and may proceed in a collective, to the extent they  
24 share a similar issue of law or fact material to the disposition of their FLSA  
25 claims." *Id.* at 1117.

26 "The limited statutory requirements of a collective action are  
27 independent of, and unrelated to, the requirements for class action under

1 Rule 23, and, by omitting most of the requirements in Rule 23 for class  
2 certification, necessarily impose a lesser burden.” *Id.* at 1112 (internal  
3 quotation marks and citations omitted). The Court’s “level of consideration is  
4 lenient” and focuses on whether the pleadings establish a “reasonable basis”  
5 for determining that the putative members are similarly situated. *Id.* at  
6 1109. “A grant of preliminary certification results in the dissemination of a  
7 court-approved notice to the putative collective action members.” *Id.*

8 Plaintiffs make a plausible showing that Plaintiff Lopez Yanez is  
9 “similarly situated” to the putative collective members. Plaintiffs allege all  
10 Tradespeople who worked for Defendant performed substantially similar  
11 duties as Welders, Ship Fitters, Pipe Fitters, Sheet Metal Workers,  
12 Electricians, Machinists, Riggers, and other similar positions in skilled  
13 trades. (FAC ¶ 14). Plaintiff Lopez Yanez and the putative collective action  
14 members are similarly situated because Defendant excluded the *per diem*  
15 from the calculation of overtime compensation for both Plaintiff Lopez Yanez  
16 and the putative collective action members. (*Id.* ¶ 15). Because it is  
17 plausible that there are “similar issue[s] of law or fact material to the  
18 disposition” of the FLSA claim, the Court grants conditional certification of  
19 the FLSA collective action.

### 20 **C. Fair, Reasonable, and Adequate Settlement**

21 Federal Rule of Civil Procedure 23(e)(2) requires that any settlement in  
22 a class action be approved by the court which must find that the settlement is  
23 fair, reasonable, and adequate. Fed. R. Civ. P. 23(e)(2). At the preliminary  
24 approval stage the court determines whether the settlement “appears to be  
25 the product of serious, informed, non-collusive negotiations, has no obvious  
26 deficiencies, does not improperly grant preferential treatment to class  
27 representatives or segments of the class, and falls within the range of

1 possible approval.” *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078,  
2 1079 (N.D. Cal. 2007) (internal quotation marks and citation omitted).

3 Similarly, a collective action under the FLSA may not be settled  
4 without supervision of either the Secretary of Labor or a district court.  
5 *Kerzich v. Cty. of Tuolumne*, 335 F. Supp. 3d 1179, 1183 (E.D. Cal. 2018).  
6 Courts often apply the Rule 23 factors used in determining the fairness of a  
7 proposed class action settlement when evaluating the fairness of an FLSA  
8 settlement, although it is recognized that some of those factors do not apply  
9 due to the inherent differences between class actions and FLSA actions. *Selk*  
10 *v. Pioneers Mem’l Healthcare Dist.*, 159 F. Supp. 3d 1164, 1172 (S.D. Cal.  
11 2016).

12 1. *Product of Serious, Informed, Non-Collusive Negotiations*

13 “The first factor concerns the means by which the parties arrived at  
14 settlement.” *Uschold v. NSMG Shared Servs., LLC*, 333 F.R.D. 157, 169  
15 (N.D. Cal. 2019) (quotation marks and citation omitted). The court must be  
16 satisfied that the parties “engaged in sufficient investigation of the facts to  
17 enable the court to intelligently make . . . an appraisal of settlement.” *Acosta*  
18 *v. TransUnion, LLC*, 243 F.R.D. 377, 396 (C.D. Cal. 2007) (internal quotation  
19 marks and citation omitted).

20 Counsel engaged in “thorough negotiations,” “substantial informal  
21 discovery and data exchange,” and Plaintiffs’ counsel “interviewed a number  
22 of . . . affected employees.” (ECF No. 23 at 24). For example, Defendant  
23 “provided a large volume of damages data and Plaintiffs’ counsel conducted  
24 [a] thorough review and analysis of the data and estimate potential damages  
25 incurred by the Settlement Class.” (*Id.*). Additionally, the parties engaged in  
26 private mediation with an experienced mediator. (*Id.*). A settlement “was  
27 reached only after a mediator’s proposal was issued at the conclusion of a full

1 day of mediation.” (*Id.*). Following the mediation, Defendant provided  
2 additional data. (*See id.*).

3 “The use of an experienced private mediator and presence of discovery  
4 supports the conclusion that Plaintiffs were ‘armed with sufficient  
5 information about the case’ to broker a fair settlement.” *Uschold*, 333 F.R.D.  
6 at 170 (quoting *Acosta*, 243 F.R.D. at 396). The parties have been engaging  
7 in informal discovery and settlement negotiations since October 2019. (ECF  
8 No. 23 at 9). In light of these factors, the Settlement Agreement appears to  
9 be the product of serious, informed, non-collusive negotiations.

## 10 2. *Obvious Deficiencies*

11 “The Court must next consider whether there are obvious deficiencies in  
12 the Settlement Agreement.” *Uschold*, 333 F.R.D. at 170 (internal quotation  
13 marks and citation omitted). The Court has reviewed the proposed  
14 Settlement Agreement and does not note any obvious deficiencies.

## 15 3. *Lack of Preferential Treatment*

16 Next, the Court considers whether the Settlement Agreement provides  
17 preferential treatment to any class member. Under the Settlement  
18 Agreement, each class member and collective action member may claim their  
19 pro rata share of the Net Settlement Amount based on the number of  
20 workweeks worked during the class periods. (SA ¶ 68). The PAGA recipients  
21 will receive a pro rata share of the PAGA Settlement Amount based on the  
22 number of pay periods each PAGA recipient worked during the PAGA Period.  
23 (SA ¶ 6). The Settlement Agreement further provides that the named  
24 Plaintiffs will each receive a \$5,000 service award. (SA ¶ 58).

25 “Incentive awards are fairly typical in class action cases.” *Rodriguez v.*  
26 *W. Publ’g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009). Incentive awards “are  
27 intended to compensate class representatives for work done on behalf of the

1 class, to make up for financial or reputational risk undertaken in bringing  
2 the action, and, sometimes to recognize their willingness to act as a private  
3 attorney general.” *Id.* at 958-59. Excessive incentive awards “may put the  
4 class representative in a conflict with the class and present a considerable  
5 danger of individuals bringing cases as class actions principally to increase  
6 their own leverage to attain a remunerative settlement for themselves and  
7 then trading on that leverage in the course of negotiations.” *Id.* at 960  
8 (internal quotation marks and citation omitted).

9 Plaintiffs explain the service awards are justified because the named  
10 Plaintiffs took risks in this action, spent time and effort “assisting in the  
11 investigation and consulting with counsel regarding all aspects of the  
12 litigation and settlement,” and have “broader” releases than those of other  
13 Class Members. (ECF No. 23 at 15). Although Plaintiffs submit no  
14 declarations or other evidence attesting to the quality or scope of the named  
15 Plaintiffs’ representative service, the amount requested is comparable to  
16 amounts awarded by courts in this Circuit. *See, e.g., In re Mego Fin. Corp.*  
17 *Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000) (approving \$5,000 to two  
18 plaintiff representatives); *Wren v. RGIS Inventory Specialists*, No. C-06-  
19 05778 JCS, 2011 WL 1230826, at \*37 (N.D. Cal. Apr. 1, 2011) (approving  
20 \$5,000 incentive awards to each of the 24 named plaintiffs).

21 Accordingly, at this stage, there is no indication that the service award  
22 constitutes “preferential treatment” that would defeat preliminary approval.  
23 The motion for final approval must include evidence to support the requested  
24 awards.

#### 25 4. *Range of Possible Approval*

26 To determine whether the Settlement Agreement “falls within the  
27 range of possible approval,” the Court focuses on “substantive fairness and

1 adequacy” and “consider[s] [P]laintiffs’ expected recovery balanced against  
2 the value of the settlement offer.” *In re Tableware Antitrust Litig.*, 484 F.  
3 Supp.2d at 1080. “[I]t is well-settled law that a proposed settlement may be  
4 acceptable even though it amounts to only a fraction of the potential recovery  
5 that might be available to class members at trial.” *Nat’l Rural Telecomms.*  
6 *Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004).

7 The Settlement Agreement provides for a recovery for the class of  
8 \$858,000, less settlement administration costs, attorneys’ fees and expenses,  
9 Plaintiffs’ service awards, and the PAGA settlement. This represents an  
10 adequate recovery for the class, in light of the risk, expense, complexity, and  
11 likely duration of further litigation. Under the allocation formula proposed by  
12 the parties, Class Members would receive full recovery for their overtime  
13 claims, including interest and liquidated damages. Plaintiffs’ counsel  
14 declares that the average payout for the California Subclass and FLSA  
15 Subclass is \$4,400 per employee and the average payout for each PAGA  
16 Recipient is \$49. (Pogrel Decl. ¶¶ 42-43).

17 Plaintiffs also identify certain risks that they may face in further  
18 litigation. Defendant HL Welding has at all times maintained that under its  
19 written per diem pay policies, per diem payments to class members  
20 represented non-taxable reimbursement for travel expenses on which  
21 overtime premiums are not required under either California law or the FLSA.  
22 HL Welding also contends that many Tradespeople signed enforceable  
23 arbitration agreements. HL Welding contends such arguments would defeat  
24 class certification and also go to the merits of Plaintiffs’ claims. While  
25 Plaintiffs believe they can defeat these defenses, there remains a risk that a  
26 jury could agree with Defendant or that the Court could decline to certify the  
27 class. As such, continued litigation presents risks that Plaintiffs may receive



1 less or no recovery than provided in the Settlement Agreement.

2 The risks and costs of continued litigation at least balance the benefit of  
3 the estimated payout to class members, warranting preliminary approval and  
4 comment from the class members. The proposed Settlement Agreement  
5 appears fair, adequate, reasonable, and in the best interests of the class  
6 members given the uncertainty of continued litigation.

7 Plaintiffs indicate that Settlement Class Members will receive a “pro  
8 rata” portion of the Net Settlement Amount and elsewhere indicate the  
9 Settlement Class Members will receive “full recovery.” Plaintiffs are  
10 **ORDERED** to clarify in their motion for final approval whether Settlement  
11 Class Members will receive a “pro rata” portion of the Net Settlement  
12 Amount, “full recovery” of their individual claims, or whether the “pro rata”  
13 portion will exceed individual’s full recoveries.

#### 14 **D. Class Notice Plan**

15 For any class certified under Rule 23(b)(3), class members must be  
16 afforded “the best notice that is practicable under the circumstances,  
17 including individual notice to all members who can be identified through  
18 reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). Such notice must clearly state:  
19 (1) the nature of the action; (2) the definition of the class certified; (3) the  
20 class claims, issues, or defenses; (4) that a class member may enter an  
21 appearance through an attorney if the member so desires; (5) that the court  
22 will exclude from the class any member who requests exclusion; (6) the time  
23 and manner for requesting exclusion; and (7) the binding effect of a class  
24 judgment on members under Rule 23(c)(3). *Id.* “Notice is satisfactory if it  
25 generally describes the terms of the settlement in sufficient detail to alert  
26 those with adverse viewpoints to investigate and to come forward and be  
27 heard.” *Churchill Vill., LLC v. GE*, 361 F.3d 566, 575 (9th Cir. 2004)

1 (internal quotation marks and citation omitted).

2 The Notice Packet attached as exhibit B to the Settlement Agreement  
3 meets the requirements of Rule 23(c)(2)(B). The notice describes the  
4 allegations and claims in plain language, defines class members, includes  
5 contact information for Plaintiffs' counsel and the Settlement Administrator,  
6 and summarizes the settlement amount and its distribution. (SA, Exhibit A).  
7 The Notice Packet also contains an estimate of each member's settlement  
8 amount. (SA, Exhibit B). The notice further describes the options available  
9 to class members, including instructions for opting out of the settlement and  
10 filing an objection. (SA, Exhibit A). It also informs class members that  
11 receiving a settlement award will release certain claims against certain  
12 parties. (*Id.*) The notice informs class members that they may appear at the  
13 final fairness hearing. (*Id.*). Finally, it directs class members, collective  
14 action members, and PAGA Recipients to a website with more information,  
15 including the Settlement Agreement. (*Id.*).

16 The notice plan itself is also adequate. Within five business days of  
17 preliminary approval Defendant will provide the Settlement Administrator  
18 with Settlement Class Members' and PAGA Recipients' social security  
19 numbers or ITIN, last known addresses and telephone numbers, and dates  
20 worked as Settlement Class Member and pay periods as a PAGA Recipient.  
21 (SA ¶ 81). The Settlement Administrator must then update the addresses  
22 using the results of the National Change of Address database. (SA ¶ 82).  
23 The Settlement Administrator must mail the Notice Packet to the Settlement  
24 Class Members and PAGA Recipients within 30 days of preliminary approval.  
25 (ECF No. 23 at 29). If any notices are returned to the Settlement  
26 Administrator with a forwarding address, the Settlement Administrator will  
27 re-mail the Notice Packet to that address. (SA ¶ 83). If any notices are

1 returned without a forwarding address, the Settlement Administrator will  
2 perform a standard skip trace to attempt to identify a valid address and re-  
3 mail the Notice. (*Id.*). Settlement Class Members have 45 days from the  
4 mailing of the Notice Packet to either opt-out, challenge dates of employment,  
5 or submit written objections. (ECF No. 23 at 30).

### 6 **E. Attorneys' Fees**

7 Rule 23(h) provides for an award of attorneys' fees and costs in a  
8 certified class action where it is "authorized by law or by the parties'  
9 agreement." Fed. R. Civ. P. 23(h). "[C]ourts have an independent obligation  
10 to ensure that the award, like the settlement itself, is reasonable, even if the  
11 parties have already agreed to an amount." *In re Bluetooth Headset Prods.*  
12 *Litig.*, 654 F.3d at 941. Where a settlement produces a common fund for the  
13 benefit of the entire class, courts may employ either the lodestar method or  
14 the percentage-of-the-fund method to determine the reasonableness of the fee  
15 request. *Mercury Interactive Corp. Sec. Litig. v. Mercury Interactive Corp.*,  
16 618 F.3d 988, 992 (9th Cir. 2010). When applying the percentage-of-the-fund  
17 method, an attorneys' fees award of "twenty-five percent is the 'benchmark'  
18 that district courts should award." *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373,  
19 379 (9th Cir. 1995) (citing *Six (6) Mexican Workers v. Ariz. Citrus Growers*,  
20 904 F.2d 1301, 1311 (9th Cir. 1990)). A district court "may adjust the  
21 benchmark when special circumstances indicate a higher or lower percentage  
22 would be appropriate." *Id.*

23 The Settlement Agreement provides for a maximum award of \$286,000  
24 in attorneys' fees (one-third of the Gross Settlement Amount). (SA ¶ 62).  
25 Defendant does not oppose the award. Plaintiffs' counsel asserts that the  
26 motion for attorneys' fees and costs will be supported with argument and  
27 evidence. (ECF No. 23 at 15).

1 Without Class Counsel’s briefing, the Court finds no reason to award  
2 fees that exceed the Ninth Circuit’s 25% benchmark. Class Counsel will need  
3 to show what special circumstances exist warranting a higher percentage in  
4 their motion for attorneys’ fees and costs.

5 Plaintiffs’ Counsel also request litigation costs. “There is no doubt that  
6 an attorney who has created a common fund for the benefit of the class is  
7 entitled to reimbursement of reasonable litigation expenses from that fund.”  
8 *Ontiveros v. Zamora*, 303 F.R.D. 356, 375 (E.D. Cal. 2014) (internal quotation  
9 marks and citation omitted). To that end, district courts in this Circuit  
10 regularly award litigation costs and expenses in wage-and-hour class actions.  
11 The Settlement Agreement provides that Plaintiffs’ counsel may obtain up to  
12 \$10,000. (SA ¶ 62). Counsel is instructed to submit an itemized sheet  
13 summarizing costs with its motion for attorneys’ fees so that the Court can  
14 determine the reasonableness of the costs and expenses incurred for the  
15 benefit of the class.

#### 16 **F. PAGA Claims**

17 The Settlement Agreement also provides for PAGA penalties. (*See*  
18 *generally*, SA). Accordingly, the Court must take into account special  
19 considerations of that statute to determine whether preliminary approval of  
20 the settlement is appropriate with respect to those claims.

21 Under PAGA, an “aggrieved employee” may bring an action for civil  
22 penalties for labor code violations on behalf of himself and other current or  
23 former employees. Cal. Lab. Code § 2699(a). A plaintiff suing under PAGA  
24 “does so as the proxy or agent of the state’s labor law enforcement agencies.”  
25 *Arias v. Superior Ct.*, 46 Cal. 4th 969, 986 (2009). A PAGA plaintiff has “the  
26 same legal right and interest as state labor law enforcement agencies” and  
27 the action “functions as a substitute for an action brought by the government

1 itself.” *Id.* “[A] judgment in that action binds all those, including nonparty  
2 aggrieved employees, who would be bound by a judgment in an action  
3 brought by the government.” *Id.* A plaintiff bringing a PAGA action owes a  
4 duty to their “fellow aggrieved workers” and “to the public at large.”  
5 *O’Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d 1110, 1134 (N.D. Cal. 2016).

6 Civil penalties collected pursuant to PAGA are distributed between the  
7 aggrieved employees (25%) and the LWDA (75%). Cal. Lab. Code § 2699(i).  
8 Any settlement of PAGA claims must be approved by the Court. Cal. Lab.  
9 Code § 2699(l)(2). The proposed settlement must also be sent to the agency at  
10 the same time that it is submitted to the court. *Id.*

11 There are “fundamental[]’ differences between PAGA actions and class  
12 actions.” *Sakkab v. Luxottica Retail N. Am., Inc.*, 803 F.3d 425, 435 (9th Cir.  
13 2015) (quoting *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1123 (9th  
14 Cir. 2014)). One of those differences is that “class certification is not required  
15 to pursue a PAGA representative claim.” *Haralson v. U.S. Aviation Servs.*  
16 *Corp.*, 383 F. Supp. 3d 959, 971 (N.D. Cal. 2019).

17 However, the California legislature, California Supreme Court,  
18 California Courts of Appeal, and LWDA have not set a standard for  
19 approving PAGA settlements. *Id.* The LWDA has only stated that it is  
20 important that “the relief provided for under the PAGA be genuine and  
21 meaningful, consistent with the underlying purpose of the statute to benefit  
22 the public and, in the context of a class action, the court evaluate whether the  
23 settlement meets the standards of being ‘fundamentally fair, reasonable, and  
24 adequate’ with reference to the public policies underlying the PAGA.”  
25 *O’Connor*, 201 F. Supp. 3d at 1133 (quoting LWDA Response at 2-3). Based  
26 on the LWDA’s Response, district courts have applied “a Rule 23-like  
27 standard” asking whether the settlement of the PAGA claims is

1 fundamentally fair, reasonable, and adequate. *Haralson*, 383 F. Supp. 3d at  
2 972.

3 Under PAGA, “the civil penalty is one hundred dollars (\$100) for each  
4 aggrieved employee per pay period for the initial violation and two hundred  
5 dollars (\$200) for each aggrieved employee per pay period for each  
6 subsequent violation,” except for provisions in which a penalty is specifically  
7 provided. Cal. Lab. Code § 2699(f)(2). A court may “award a lesser amount  
8 than the maximum civil penalty amount specified by this part if, based on the  
9 facts and circumstances of the particular case, to do otherwise would result in  
10 an award that is unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab.  
11 Code § 2699(e)(2).

12 The Settlement Agreement provides that a copy of the Settlement  
13 Agreement will be sent to the LWDA at the time it is submitted to the Court.  
14 (SA ¶ 63). With this procedural requirement presumably satisfied, the Court  
15 next discusses whether the Settlement Agreement’s \$100,000 allocation to  
16 PAGA penalties is likely to be found fair, reasonable, and adequate.

17 Plaintiffs calculated the maximum PAGA penalties for the PAGA  
18 Period to be \$443,000 for the overtime wage claims, calculated based on the  
19 initial violation rates because Defendant may not be subject to the  
20 heightened rates for the subsequent violations. (Pogrel Decl., ¶ 38).  
21 Plaintiffs explain that any penalties under PAGA would depend on whether  
22 the PAGA Recipients’ arbitration agreements would foreclose participation in  
23 a PAGA action in court and whether the trier of fact in a bench trial would  
24 reduce PAGA damages. (*Id.*). Additionally, Defendant “never agreed that  
25 Plaintiffs’ damages calculations were accurate or reliable. On the contrary,  
26 Defendant always contended . . . that Class Members estimates of their  
27 overtime hours were unreliable and exaggerated.” (Pogrel Decl. ¶ 39).

1 “[I]n actions involving wage and hour class claims and PAGA claims  
2 that settle, parties often minimize the total amount of the settlement that is  
3 paid to PAGA penalties in order to maximize payments to class members.”  
4 *Mejia v. Walgreen Co.*, No. 2:19-cv-00218 WBS AC, 2020 U.S. Dist. LEXIS  
5 220685, at \*26 (E.D. Cal. Nov. 24, 2020). The public policies underlying  
6 PAGA are also likely met here because the settlement more broadly provides  
7 a “robust” remedy for possible violations of the California Labor Code and the  
8 FLSA. (*See Pogrel Decl.* ¶ 45) (“[T]he \$435,000 fund that will be paid to  
9 California Subclass and FLSA Subclass members upon final approval of this  
10 settlement is more than 100% of Class Counsel’s best estimate of the full  
11 value of the potential recovery for the California Subclass and FLSA Subclass  
12 members if they had worked overtime every week they were employed by HL  
13 Welding during the relevant periods.”); *see O’Connor*, 201 F. Supp. 3d at 1134  
14 (“[I]f the settlement for the Rule 23 class is robust, the purposes of PAGA  
15 may be concurrently fulfilled.”).

16 Although the Settlement Agreement’s \$100,000 allocation to PAGA  
17 penalties amounts to roughly 22% of the maximum PAGA penalties, the  
18 Court preliminarily finds that the settlement for the Rule 23 class and FLSA  
19 collective action is robust enough to fulfill PAGA’s purposes.

#### 20 **IV. CONCLUSION**

21 For the reasons stated above, the Court **GRANTS** Plaintiffs’ motion  
22 (ECF No. 23) and the proposed settlement is preliminarily approved. **IT IS**  
23 **HEREBY ORDERED** that:

- 24 1. Simpluris, Inc. is appointed as Settlement Administrator.
- 25 2. Notice of the proposed settlement, and the rights of Settlement  
26 Class Members, including the right to opt out of the settlement, shall be  
27 given by mailing of the Notice of Class Action and PAGA Settlement by first

1 class, postage prepaid, to all Settlement Class Members and PAGA  
2 Recipients pursuant to the applicable provisions in the Stipulation. HL  
3 Welding shall provide the Settlement Administrator with the information  
4 necessary to conduct this mailing as set forth in the Stipulation;

5 3. A hearing shall be held before this Court on **December 15, 2021**  
6 **at 1:30 p.m.** in Courtroom 3B to consider whether the settlement should be  
7 given final approval by the Court:

8 (a) Written objections by Settlement Class Members to the  
9 proposed settlement will be considered if delivered on or before the Notice  
10 Response Deadline;

11 (b) At the Final Approval Hearing, Settlement Class Members  
12 may be heard orally in support of or in opposition to the settlement;

13 (c) Class Counsel and counsel for HL Welding should be  
14 prepared at the hearing to respond to objections filed by Settlement Class  
15 Members, and to provide other information as appropriate, bearing on  
16 whether or not the settlement should be approved;

17 (d) At the Final Approval Hearing, the Court shall consider any  
18 motions or applications for attorney fees, costs and litigation expenses, and  
19 incentive payment to the Class Representatives, consistent with the  
20 Settlement Agreement, and any such motions shall be filed with the Court no  
21 less than 30 days before the Notice Response Deadline; and

22 (e) At the Final Approval Hearing, the Court shall consider any  
23 motions for approval of the PAGA settlement, which must be filed with the  
24 Court no less than 30 days before the Notice Response Deadline.

25 4. In the event that the Effective Date occurs, all Settlement Class  
26 Members will be deemed to have forever released and discharged the  
27 Released Claims. In the event that the Effective Date does not occur for any



1 reason whatsoever, the Stipulation shall be deemed null and void and shall  
2 have no effect whatsoever.

3 5. The Court **ORDERS** the following schedule for further proceedings:

<b>DEADLINE</b>	<b>EVENT</b>
5 5 days after 6 preliminary approval of 7 settlement	8 Defendants to provide Settlement 9 Administrator and Plaintiffs' Counsel a 10 final spreadsheet, which lists each 11 Class Member's first and last name, 12 last known address and phone number, 13 Social Security number or ITIN, the 14 dates of employment and total 15 workweeks. The version of the 16 spreadsheet provided to Plaintiffs' 17 counsel will include only the last four 18 digits of each Class Member's Social 19 Security number in lieu of the full 20 number.
21 30 days before Final 22 Approval Hearing	23 Plaintiffs to file Motion for 24 Approval of Attorney's Fees and Costs, 25 and Plaintiff Service Awards.
26 30 days after 27 preliminary approval of settlement	Mailing by first class mail of Class Action Settlement Notice and Estimated Settlement Share Form (collectively "Notice Packet") by Settlement Administrator.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

<p>No later than 25 days after mailing of Notice Packet</p>	<p>Settlement Administrator to conduct trace/search efforts and send a follow up mailing to Settlement Class Members whose Notice Packet was returned as undeliverable or whose listed address is found to be inaccurate or outdated.</p>
<p>45 days after mailing of Notice Packet</p>	<p>Last day for Settlement Class Members to opt out, challenge dates of employment, or submit written objections (the “Objection/Exclusion Deadline”).</p>
<p>10 days after the Objection/ Exclusion Deadline</p>	<p>Settlement Administrator to provide counsel with opt outs and challenges received from Settlement Class Members, and also prepare a declaration for Plaintiffs’ counsel and Defendant’s counsel review and approval certifying the completion and results of the class notice and related processes.</p>

<p>30 days before final approval hearing</p>	<p>Last day for filing and service of papers in support of final settlement approval of Class Settlement and approval of PAGA Settlement. Including declaration from Settlement Administrator.</p>
<p>December 15, 2021 at 1:30 PM in Courtroom 3B of the Schwartz Courthouse</p>	<p>Hearing for Final Approval and Approval of PAGA Settlement</p>
<p>Date Court Grants Final Approval of the Settlement<sup>1</sup></p>	<p>Settlement Effective Date</p>
<p>Within five (5) days of the Settlement Effective Date</p>	<p>Settlement Administrator to make the final calculation of payments from the Net Settlement Fund to be distributed to the Settlement Class Members and provide all Counsel with a report listing the amount of all payments to be made to each Settlement Class Member from the Net Settlement Fund.  Plaintiffs to file a Dismissal of the <i>Muongkhot</i> Action.</p>

---

<sup>1</sup> Assumes no objections to the Settlement.

<p>1            Within Ten (10) days 2 of the Settlement Effective 3 Date 4 5 6</p>	<p>Defendant shall deposit the money to fund \$286,000 of the GSA and one-half of the employer side taxes with the Settlement Administrator (“Deposit 1”)</p>
<p>7            Within One Hundred 8 and Fifty (150) days of the 9 Settlement Effective Date 10 11 12</p>	<p>Defendant shall deposit the money to fund a further \$286,000 of the GSA and one-half of the employer side taxes with the Settlement Administrator (“Deposit 2”)</p>
<p>13           Within five (5) 14 business days of Deposit 2, 15 above 16 17 18 19 20 21 22 23 24</p>	<p>Settlement Administrator to distribute and pay from the Settlement Fund each of the following: (1) Settlement share checks to all Settlement Class Members and PAGA Recipients; (2) awarded attorney reimbursed litigation expenses to Plaintiffs’ counsel; (3) check for the class representatives’ service awards; (4) PAGA Penalties to California LWDA, and (5) administration costs paid to the Settlement Administrator.</p>

25  
26  
27

1 2 3 4	120 days after distribution of checks to Eligible Settlement Class Members	Expiration / void date for checks distributed to Eligible Settlement Class Members.
5 6 7 8	Within Three Hundred (300) days of the Settlement Effective Date	Defendant shall deposit the money to fund the balance of the GSA - a further \$286,000 ("Deposit 3")
9 10 11 12	Within five (5) business days of Deposit 3, above	Settlement Administrator to distribute and pay from the Settlement Fund all awarded attorneys' fees to Plaintiffs' counsel.
13 14 15 16 17	Within 10 days of final payment of attorney's fees	Class Counsel to submit final Settlement Administrator's report regarding status of payments, and request for distribution of any residual to Court-approved <i>cy pres</i> beneficiary.
18 19 20 21 22	Within 5 days of ruling on a motion for distribution of any residual funds to Court-approved <i>cy pres</i> beneficiary	Settlement Administrator to pay any residual funds in the settlement fund to or the <i>cy pres</i> beneficiary.
23 24 25 26	10 days after payment of residual funds to <i>cy pres</i> beneficiary	Class Counsel to file and serve final Settlement Administrator's report regarding all payments and the <i>cy pres</i> distribution, if any.

27 5. Pending further order of the Court, all proceedings in this matter

1 except those contemplated herein and in the Settlement Agreement are  
2 stayed.

3 6. The Court expressly reserves the right to adjourn or continue the  
4 Final Approval Hearing without further notice to the Class.

5 **IT IS SO ORDERED.**

6 Dated: July 20, 2021

7 

8 Hon. Mitchell D. Dembin  
9 United States Magistrate Judge  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27