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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 ARIANA PRESTON, individually and
12 on behalf of all others similarly situated,
13 Plaintiff,

14 v.

15 PORCH.COM, INC., a Delaware
16 Corporation; HIRE A HELPER LLC,
17 a California limited liability company;
18 KERI MILLER, an individual.; and
19 DOES 1 through 50, inclusive,

20 Defendants.

Case No.: 21-CV-168 JLS (BLM)

**ORDER GRANTING MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

(ECF No. 30)

21 Presently before the Court is Plaintiff Ariana Preston's unopposed Motion for
22 Preliminary Approval of Class Action Settlement ("Prelim. Approval Mot.," ECF No. 30-
23 1); *see also* ECF No. 33 (notice of non-opposition). The Court vacated the hearing and
24 took the matter under submission without oral argument pursuant to Civil Local Rule
25 7.1(d)(1). *See* ECF No. 34. Having reviewed the terms of the Proposed Settlement
26 Agreement (Declaration of David C. Hawkes in Support of Motion for Preliminary
27 Approval of Class Action Settlement ("Hawkes Decl.") Ex. A, ECF No. 30-2 at 13-38),
28 Plaintiff's arguments, and the law, the Court concludes that the settlement falls within the

1 range of reasonableness warranting preliminary approval. Accordingly, the Court
2 **GRANTS** the Preliminary Approval Motion.

3 **GENERAL BACKGROUND**

4 This case began on November 23, 2020, when Plaintiff filed a putative class action
5 against Porch.com; Hire A Helper, LLC; Elite Insurance Group, Inc.; Kandela, LLC; and
6 Serviz, Inc. (collectively, “Defendants”) in San Diego Superior Court. *See* ECF No. 1. On
7 January 28, 2021, Defendants timely removed to this Court. *Id.* In the operative First
8 Amended Complaint, filed November 29, 2021, Plaintiff alleges class action claims against
9 Defendants for overtime violations, failure to pay wages upon separation, and unlawful
10 and unfair business practices.¹ *See generally* ECF No. 32 (“FAC”). More specifically,
11 Plaintiff alleges on behalf of a putative class that Defendants (1) failed to pay all
12 compensation owed at separation; (2) failed to pay all wages earned; (3) failed to provide
13 accurate itemized wage statements; (4) failed to compensate for missed, late, or on duty
14 meal periods; (5) failed to compensate for missed, late, or on duty rest periods; (6) failed
15 to pay vacation wages at termination; (7) engaged in unlawful overtime policies and
16 procedures; (8) failed to provide timely, uninterrupted, 30-minute meal periods; (9) failed
17 to maintain accurate time records; (10) failed to pay overtime compensation; (11) failed to
18 reimburse business expenses; and (12) violated the Private Attorneys General Act of 2004
19 (“PAGA”), California Labor Code § 2968 *et seq.* *See generally* FAC. On January 28,
20 2021, Defendants filed an answer denying liability and asserting twenty affirmative
21 defenses. *See generally* ECF No. 4.

22 In July 2021, the Parties participated in a private mediation with Michael D. Young
23 of Judicate West that resulted in a tentative settlement. Prelim. Approval Mot. at 1.
24 Thereafter, the Parties reached a comprehensive class-wide settlement agreement. *Id.* The
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26 ¹ In the FAC, Plaintiff also alleges individual claims of retaliation, discrimination, hostile work
27 environment, failure to engage in the interactive process, failure to accommodate, failure to prevent
28 discrimination, harassment and retaliation, and wrongful constructive termination. *See generally* FAC.
The Parties settled Plaintiff’s individual claims separately from the class claims. Prelim. Approval Mot.
at 4 n.2.

1 resulting Stipulation of Class Action and PAGA Settlement and Release, filed November
2 22, 2021, is now before the Court. *See generally* Hawkes Decl. Ex. A.

3 **SETTLEMENT TERMS**

4 The Parties have submitted a comprehensive Stipulation of Class Action and PAGA
5 Settlement and Release with approximately twenty-two pages of substantive terms,
6 Hawkes Decl. Ex. A (“Proposed Settlement Agreement”), as well as a Proposed Notice,
7 Hawkes Decl. Ex. 1 (“Proposed Notice,” ECF No. 30-2 at 40–46).

8 **I. Proposed Settlement Class**

9 The Proposed Settlement Class is defined to include “all current and former non-
10 exempt California employees of the Defendants or their present and former parents,
11 subsidiaries, successors or assigns, including without limitation Kandela, LLC,
12 Serviz.com, Inc., and Elite Insurance Group, Inc. The Settlement Class, however, shall not
13 include any person who signed severance agreements or who submits a timely and valid
14 Request for Exclusion[.]” Proposed Settlement Agreement ¶ 8. According to the Parties’
15 investigation and available data, this constitutes approximately 236 individuals (the
16 “Settlement Class”). Hawkes Decl. ¶ 21.

17 **II. Proposed Monetary Relief**

18 The Proposed Settlement Agreement provides for \$500,000 in non-reversionary
19 gross settlement proceeds, Proposed Settlement Agreement ¶ 15, of which no more than
20 one-third (or \$166,666.67) is to be used to pay attorneys’ fees; no more than \$20,000 is
21 allocated to Class Counsel’s costs; no more than \$6,000 is allocated to settlement
22 administration fees and costs; no more than \$10,000 is allocated for the named plaintiff
23 service award; and \$20,000 is allocated to PAGA penalties, twenty-five percent of which
24 (\$5,000) is to be distributed to the Settlement Class. Prelim. Approval Mot. at 8–10. The
25 resulting net settlement amount, or about \$282,333, will be used to pay the Settlement
26 Class members. *Id.* at 10. Employer-side payroll taxes will not be deducted from the
27 settlement and will be paid by Defendants with separate funds. *Id.*

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1 Members of the Settlement Class will automatically be mailed a settlement payment.
2 *See* Proposed Settlement Agreement ¶ 16.c.viii. Settlement checks will be valid for 180
3 days from their date of mailing, and any checks left uncashed after the expiration period
4 will be voided and transmitted pursuant to California Code of Civil Procedure § 384 to the
5 International Justice Mission as the *cy pres* recipient. *See id.* ¶ 21.

6 **RULE 23 SETTLEMENT CLASS CERTIFICATION**

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

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

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

23 Fed. R. Civ. P. 23(a).

24 In addition to Rule 23(a)’s requirements, the proposed class must satisfy the
25 requirements of one of the subdivisions of Rule 23(b). *Zinser*, 253 F.3d at 1186. Here,
26 Plaintiff seeks to certify the Settlement Class under Rule 23(b)(3), *see* Prelim. Approval
27 Mot. at 22, which permits certification if “questions of law or fact common to class
28 members predominate over any questions affecting only individual class members” and “a

1 class action is superior to other available methods for fairly and efficiently adjudicating the
2 controversy.” Fed. R. Civ. P. 23(b)(3). The Court addresses each of these requirements in
3 turn.

4 **I. Rule 23(a) Requirements**

5 **A. Numerosity**

6 Federal Rule of Civil Procedure 23(a)(1) requires that a class must be “so numerous
7 that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). “[C]ourts generally
8 find that the numerosity factor is satisfied if the class comprises 40 or more members and
9 will find that it has not been satisfied when the class comprises 21 or fewer.” *Celano v.*
10 *Marriott Int’l, Inc.*, 242 F.R.D. 544, 549 (N.D. Cal. 2007). District courts within the Ninth
11 Circuit have “enacted presumptions that the numerosity requirement is satisfied by a
12 showing of 25–30 members.” *See, e.g., Slaven v. BP Am., Inc.*, 190 F.R.D. 649, 654 (C.D.
13 Cal. 2000).

14 Here, the proposed Settlement Class consists of approximately 236 Class Members.
15 Prelim. Approval Mot. at 20. Because of the presumption of numerosity created by twenty-
16 five to thirty members, it logically follows that joinder of 236 members is impracticable
17 for purposes of Rule 23(a)(1), and the numerosity requirement therefore is satisfied here.
18 *See Slaven*, 190 F.R.D. at 654; *see also Harris v. Palm Springs Alpine Estates, Inc.*, 329
19 F.2d 909, 913 (9th Cir. 1964) (stating “‘impracticability’ does not mean ‘impossibility’”)
20 (citing *Advert. Specialty Nat. Ass’n v. FTC*, 238 F.2d 108, 119 (1st Cir. 1956)).

21 **B. Commonality**

22 Federal Rule of Civil Procedure 23(a)(2) requires that there be “questions of law or
23 fact common to the class.” Fed. R. Civ. P. 23(a)(2). Commonality requires that “the class
24 members ‘have suffered the same injury.’” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338,
25 349–50 (2011) (quoting *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157 (1982)). “The
26 existence of shared legal issues with divergent factual predicates is sufficient, as is a
27 common core of salient facts coupled with disparate legal remedies within the class.”
28 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998).

1 Here, the Parties have defined the Settlement Class to encompass all current and
2 former non-exempt California employees of Defendants at any time during the Class
3 Period. Prelim. Approval Mot. at 8. Common questions include: whether Defendants
4 complied with applicable laws under the California Labor Code and the Wage Orders of
5 the California Industrial Welfare Commission; and whether the Settlement Class is entitled
6 to alleged wages, premiums, penalties, interest, and attorneys’ fees and costs. *See id.* at
7 20. Because these questions apply to all Class Members, all Class Members have suffered
8 a common injury. Accordingly, it is appropriate for these issues to be adjudicated on a
9 class-wide basis; thus, Rule 23(a)(2) is satisfied. *See McCowen v. Trimac Transp. Servs.*
10 *(W.), Inc.*, 311 F.R.D. 579, 584–86 (N.D. Cal 2015) (finding commonality satisfied where
11 the common question was whether the defendant failed to provide meal and rest breaks).

12 **C. Typicality**

13 To satisfy Federal Rule of Civil Procedure 23(a)(3), the named plaintiff’s claims
14 must be typical of those of the class. Fed. R. Civ. P. 23(a)(3). The typicality requirement
15 is “permissive” and requires only that the named plaintiff’s claims “are reasonably
16 coextensive with those of absent class members.” *Hanlon*, 150 F.3d at 1020. “The test of
17 typicality ‘is whether other members have the same or similar injury, whether the action is
18 based on conduct which is not unique to the named plaintiff[], and whether other class
19 members have been injured by the same course of conduct.’” *Hanon v. Dataprods. Corp.*,
20 976 F.2d 497, 508 (9th Cir. 1992) (quoting *Schwartz v. Harp*, 108 F.R.D. 279, 282 (C.D.
21 Cal. 1985)). “[C]lass certification should not be granted if ‘there is a danger that absent
22 class members will suffer if their representative is preoccupied with defenses unique to
23 it.’” *Id.* (citation omitted).

24 Here, Plaintiff, like the Settlement Class, was employed by Defendants, and her
25 claims arise out of the same underlying policies and practices of Defendants as the claims
26 pertaining to the entire proposed Settlement Class. *See* Prelim. Approval Mot. at 21. As
27 with the other Settlement Class Members, Ms. Preston was subject to Defendants’ alleged
28 unlawful practices and policies. *Id.* The Parties have settled claims or defenses unique to

1 Plaintiff separate from the Settlement Class. *Id.* at 4 n.2. Accordingly, Plaintiff’s claims
2 are typical of the claims of proposed Class Members, thus satisfying Rule 23(a)(3). *See*
3 *Kayes v. Pac. Lumber Co.*, 51 F3d 1449, 1463 (9th Cir. 1995) (typicality is satisfied where
4 named plaintiffs have the same claims as other class members and are not subject to unique
5 defenses).

6 ***D. Adequacy***

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

15 Here, there is no reason to believe that the Class Representative or Class Counsel
16 have any conflicts of interest with the proposed Settlement Class Members. There also is
17 no reason to believe that the Class Representative or Class Counsel have failed to
18 vigorously investigate and litigate the case to this point. Plaintiff has retained competent
19 counsel, who have “vigorously prosecuted the action on behalf of the Class; and Plaintiff
20 was likewise actively engaged and regularly communicated with counsel up to and
21 including evaluating and approving the proposed Settlement.” Prelim. Approval Mot. at
22 21. Furthermore, Class Counsel have significant employment and class action litigation
23 experience. *Id.*; *see also* Hawkes Decl. ¶ 31. Accordingly, the Court finds that the Class
24 Representative and Class Counsel adequately represent the Settlement Class, and therefore
25 Rule 23(a)(4)’s adequacy requirement is met.

26 **II. Rule 23(b)(3) Requirements**

27 Federal Rule of Civil Procedure 23(b)(3) permits certification if “questions of law
28 or fact common to class members predominate over any questions affecting only individual

1 class members” and “a class action is superior to other available methods for fairly and
2 efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).

3 **A. Predominance**

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

8 Here, Plaintiff alleges several common questions of law and fact. *See* Prelim.
9 Approval Mot. at 22. The issues common to all Class Members include whether
10 Defendants failed to include commissions and nondiscretionary bonuses in Plaintiff’s and
11 the Settlement Class’s overtime rates of pay. *See id.* at 1. Thus, Plaintiff and the Class
12 Members share common questions of fact and law that are central to Plaintiff’s alleged
13 injuries and that predominate over individualized issues. *Id.* at 22. Additionally, Plaintiff
14 and the Class Members seek the same legal remedies. *See id.* Accordingly, the
15 predominance requirement of Rule 23(b)(3) is satisfied. *See McCowen*, 311 F.R.D. at 597
16 (finding predominance satisfied where “class-wide issues predominate over individualized
17 issues”).

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.” Fed. R. Civ. P. 23(b)(3). The superiority inquiry
22 requires the Court to 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

1 (D) the likely difficulties in managing a class action.

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

14 Here, the Class Members’ claims involve the same questions of law arising from the
15 same facts. If the Settlement Class Members’ claims were treated on an individual basis,
16 more than two-hundred potential cases would follow a similar trajectory, and each would
17 come to a similar result. *See Prelim. Approval Mot.* at 8. It also is likely that the Class
18 Members would not pursue litigation on an individual basis due to the high cost of pursuing
19 their individual claims compared with the relatively low value of recovery. *Id.*; *see also*
20 *Hanlon*, 150 F.3d at 1023. Ultimately, the interests of the Class Members in individually
21 controlling the litigation are minimal, especially given the same broad-based policies and
22 practices at issue. The Court is aware of no other pending actions adjudicating the
23 Settlement Class members’ claims against Defendants, making concentration in this forum
24 desirable.

25 Accordingly, having weighed the relevant factors, the Court concludes that class
26 treatment is the superior method of adjudicating this controversy and that the superiority
27 requirement of Rule 23(b)(3) is met.

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1 **III. Conclusion**

2 For the reasons stated above, the Court finds certification of the Settlement Class
3 proper under Rules 23(a) and (b)(3). Accordingly, the proposed Settlement Class is
4 **CERTIFIED** for settlement purposes only.

5 **PRELIMINARY FAIRNESS DETERMINATION**

6 Having certified the Settlement Class, the Court must next make a preliminary
7 determination as to whether the proposed settlement is “fair, reasonable, and adequate”
8 pursuant to Rule 23(e)(2). Under amendments to Rule 23(e), effective December 1, 2018,
9 district courts must consider the following factors to determine whether the proposal is
10 “fair, reasonable, and adequate”:

11 (A) the class representatives and class counsel have adequately
12 represented the class;

13 (B) the proposal was negotiated at arm’s length;

14 (C) the relief provided for the class is adequate, taking into
15 account:

16 (i) the costs, risks, and delay of trial and appeal;

17 (ii) the effectiveness of any proposed method of
18 distributing relief to the class, including the method of
19 processing class-member claims;

20 (iii) the terms of any proposed award of attorney’s fees,
21 including timing of payment; and

22 (iv) any agreement required to be identified under Rule
23 23(e)(3); and

24 (D) the proposal treats class members equitably relative to each
25 other.

26 Fed. R. Civ. P. 23(e)(2). Before the revisions to Rule 23(e), the Ninth Circuit had
27 developed its own list of factors to be considered. *See, e.g., In re Bluetooth Headset*
28 *Products Liab. Litig.*, 654 F.3d 935, 964 (9th Cir. 2011) (citing *Churchill Vill., L.L.C. v.*

1 *Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)). The revised factors were not intended “to
2 displace any factor [developed under existing Ninth Circuit precedent], but rather to focus
3 the court and the lawyers on the core concerns of procedure and substance that should guide
4 the decision whether to approve the proposal.” Fed. R. Civ. P. 23(e)(2) advisory
5 committee’s note to 2018 amendment. Accordingly, other factors relevant to this
6 determination include:

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

12 *Hanlon*, 150 F.3d at 1026. Furthermore, “settlement approval that takes place prior to
13 formal class certification requires a higher standard of fairness.” *Id.*

14 Here, the Proposed Settlement Agreement is the result of arms’-length negotiations
15 before a mediator following comprehensive informal discovery and investigation. Prelim.
16 Approval Mot. at 12. Additionally, it appears to the Court that the Class Representative
17 and Class Counsel have adequately represented the class, which goes to at least two of the
18 factors in the amended Rule 23(e)(2). *See* Fed. R. Civ. P. 23(e)(2)(A)–(B). The Court
19 turns to the other relevant considerations below.

20 **I. Adequacy of Relief Provided for the Class**

21 To determine whether the proposed settlement is “fair, reasonable, and adequate,”
22 Rule 23(e)(2)(C) directs a court to consider (i) the costs, risks, and delay of trial and appeal;
23 (ii) the effectiveness of any proposed method of distributing relief to the class, including
24 the method of processing class-member claims; (iii) the terms of any proposed award of
25 attorney’s fees, including timing of payment; and (iv) any agreement required to be
26 identified under Rule 23(e)(3).

27 At this preliminary stage, the Court is not yet required to rule on any proposed award
28 of attorneys’ fees. Additionally, the Parties have not identified any “side agreements”

1 under Rule 23(e)(3) within the full Settlement Agreement provided to the Court. *See*
2 *generally* Proposed Settlement Agreement. Therefore, elements (iii) and (iv) did not factor
3 into the Court’s analysis at this stage. The Court thus will turn to elements (i) and (ii) to
4 determine whether the proposed settlement provides adequate relief to the Class.

5 The Court will first examine whether the amount offered in settlement is reasonable
6 considering the uncertainties of proceeding in this case. Plaintiff advances two main
7 theories of liability: “waiting time penalties” pursuant to Cal. Labor Code §§ 201–203 and
8 unpaid overtime pursuant to Cal. Labor Code § 1194. *See* Prelim. Approval Mot. at 14.
9 Class Counsel, in coordination with their expert, projected Plaintiff’s class claim for
10 waiting time penalties has a maximum potential recovery in the range of \$325,000 to
11 \$350,000 and Plaintiff’s unpaid overtime class claim has a range of recovery between
12 \$20,000 and \$30,000. *Id.* Therefore, the maximum potential recovery for the Class if the
13 case were to proceed is about \$380,000. *Id.* The net payout to the Class, after Court-
14 authorized deductions, is projected to be approximately \$282,000, which amounts to 74%
15 of the maximum amount the Class may recover in this action. *Id.*

16 Additionally, Plaintiff argues there is uncertainty regarding the amount recoverable
17 for Plaintiff’s PAGA claim. *Id.* at 15. While Plaintiff’s counsel estimates the maximum
18 civil penalty potentially recoverable on the PAGA claim ranges from \$100,000 to
19 \$180,000, the Court has discretion to award a lesser amount. *See* Cal. Labor Code
20 § 2699(e)(2). In light of these uncertainties, Plaintiff argues that the \$20,000 allocated to
21 PAGA penalties in the Settlement is fair and reasonable. *Id.* at 16.

22 The risks and delays of continued litigation justify this compromise. The Court
23 concludes that the compensation to the Class is adequate relative to Defendants’ potential
24 exposure. *See, e.g., In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000)
25 (finding recovery of “roughly one-sixth of potential recovery” to be “fair and adequate”
26 given the difficulties in proving the case). Therefore, this factor weighs in favor of
27 preliminarily approving the settlement.

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1 **II. Preferential Treatment**

2 Rule 23(e)(2) also directs a court to examine whether “the proposal treats class
3 members equitably relative to each other.” Fed. R. Civ. P. 23(e)(2)(D).

4 Plaintiff states she will apply to the Court for an enhancement award in the amount
5 of \$10,000, in consideration for her services rendered on behalf of the Settlement Class.
6 Prelim. Approval Mot. at 19. Plaintiff argues this award is reasonable because she
7 “performed her duties admirably by working with their counsel, responding to discovery
8 requests, communicating with putative class members, attending mediation, and reviewing
9 numerous drafts of the comprehensive Settlement and proposed Class Notice.” *Id.* at 18.

10 The Court does not examine the reasonableness of Plaintiff’s request for an
11 enhancement award at this time. However, the Ninth Circuit has explained that
12 “[i]ncentive awards are fairly typical in class action cases.” *Rodriguez v. W. Publ’g Corp.*,
13 563 F.3d 948, 958 (9th Cir. 2009). At this stage, the Court does not find that the
14 enhancement award Plaintiff seeks constitutes inequitable treatment of class members.
15 Accordingly, this factor weighs in favor of preliminarily approving the settlement.

16 **III. Conclusion**

17 For the reasons stated above, the Court finds the Proposed Settlement is fair,
18 reasonable, and adequate and **GRANTS** Plaintiff’s Unopposed Motion for Preliminary
19 Approval of Class Settlement.

20 **PROPOSED SETTLEMENT NOTICE**

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

27 Where there is a class settlement, Federal Rule of Procedure 23(e)(1)(B) requires the
28 court to “direct notice in a reasonable manner to all class members who would be bound

1 by the proposal.” “Notice is satisfactory if it ‘generally describes the terms of the
2 settlement in sufficient detail to alert those with adverse viewpoints to investigate and to
3 come forward and be heard.’” *Rodriguez*, 563 F.3d at 962 (quoting *Churchill Vill., LLC v.*
4 *Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)); *see also Grunin v. Int’l House of Pancakes*,
5 513 F.2d 114, 120 (8th Cir. 1975) (“[T]he mechanics of the notice process are left to the
6 discretion of the court subject only to the broad ‘reasonableness’ standards imposed by due
7 process.”).

8 According to the Stipulation of Class Action and PAGA Settlement and Release,
9 within fourteen days of the Court’s filing of this Order, Defendants shall provide the
10 Settlement Administrator with the Class Members’ “name, address, email address, social
11 security number, and number of qualifying California overtime hours worked.” Prelim.
12 Approval Mot. at 16; *see also* Proposed Settlement Agreement ¶ 20(a). The Settlement
13 Administrator “will run a check of the Class Members’ addresses against those on file with
14 the U.S. Postal Service’s National Change of Address (NCOA) List prior to the initial
15 mailing,” and then mail the Proposed Notice by First Class U.S. Mail within twenty-eight
16 days. *Id.* The seven-page Proposed Notice:

17 (1) describes the nature of the lawsuit and claims at issue, (2)
18 defines the Settlement Class, (3) explains the amount of the
19 Settlement and how individual class member settlement
20 payments will be calculated, (4) discloses the attorneys fees’ and
21 class representative service payment that will be requested, (5)
22 details the claims that are being released, (6) explains how a
23 member of the Class can opt out of or object to the Settlement,
24 (7) discloses the time and place of the final approval hearing, and
(8) displays the contact information for class counsel and the
Settlement Administrator and advises that either may be
contacted to answer questions about the Settlement.

25 Prelim. Approval Mot. at 17.; *see also generally* Proposed Notice. Having thoroughly
26 reviewed the Proposed Notice, the Court finds that both the method and content of the
27 Proposed Notice comply with Rule 23. Accordingly, the Court **APPROVES** both the
28 content of the Proposed Notice and the proposed notification plan.

1 **CONCLUSION**

2 For the reasons stated above, the Court **GRANTS** Plaintiff’s Preliminary Approval
3 Motion (ECF No. 30) and **ORDERS**:

4 1. **PRELIMINARY CLASS CERTIFICATION:** Pursuant to Federal Rule of
5 Civil Procedure 23(b)(3), the Court **PRELIMINARILY CERTIFIES**, for settlement
6 purposes only, the following Settlement Class:

7 All current and former non-exempt California employees of the
8 Defendants or their present and former parents, subsidiaries,
9 successors or assigns, including without limitation Kandela,
LLC, Serviz.com, Inc., and Elite Insurance Group, Inc.

10 2. **PRELIMINARY APPROVAL OF PROPOSED SETTLEMENT**
11 **AGREEMENT:** The Court **PRELIMINARILY APPROVES** the Settlement Agreement
12 as fair, reasonable, and adequate pursuant to Federal Rule of Civil Procedure 23(e).

13 3. **CLASS COUNSEL:** The Court **APPOINTS** Blanchard, Krasner & French;
14 the Law Office of David A. Huch; and Matcha Law as Class Counsel for the Settlement
15 Class.

16 4. **CLASS REPRESENTATIVE:** The Court **APPOINTS** Ariana Preston as
17 Class Representative for the Settlement Class.

18 5. **NOTICE:** The Court **PRELIMINARILY APPROVES** the form and
19 substance of the Proposed Notice set forth in the Settlement Agreement, *see* Proposed
20 Notice, and **APPROVES AND APPOINTS** Phoenix Settlement Administrators as the
21 Settlement Administrator. The form and method for notifying the Class Members of the
22 Settlement Agreement and its terms and conditions satisfies the requirements of Federal
23 Rules of Civil Procedure 23(c)(2)(B) and 23(e). The Court further concludes that the
24 Notice Procedure constitutes the best notice practicable under the circumstances. As
25 provided in the Settlement Agreement, Phoenix Settlement Administrators **SHALL**
26 **PROVIDE** notice to the Class Members and respond to Class Member inquiries. Within
27 twenty-eight (28) days of the date on which this Order is electronically docketed, Phoenix
28 Settlement Administrators **SHALL DISSEMINATE** the Notice in the Form attached as

1 Exhibit 1 to the Settlement Agreement and in the manner and form provided in the
2 Stipulation of Class Action and PAGA Settlement and Release.

3 6. **FINAL APPROVAL HEARING:** The Court **SETS** a Final Approval
4 Hearing on Thursday, August 11, 2022 at 1:30 p.m., in Courtroom 4D of the Edward J.
5 Schwartz United States Courthouse, 221 W. Broadway, San Diego, CA 92101, to consider:

- 6 (a) whether the Class should be finally certified for settlement purposes;
- 7 (b) whether the Settlement Agreement should be finally approved as fair, reasonable,
8 and adequate;
- 9 (c) Class Counsel’s application for attorneys’ fees and expenses; and
- 10 (d) Plaintiff’s request for a service award.

11 At the Final Approval Hearing, the Parties also shall be prepared to update the Court as to
12 any new developments, including any untimely submitted objections or any other issues as
13 the Court deems appropriate. The date and time of the Final Approval Hearing **SHALL**
14 **BE INCLUDED** in the Notice to be mailed to all Class Members.

15 7. **MOTION FOR FINAL APPROVAL OF CLASS ACTION**
16 **SETTLEMENT:** No later than twenty-eight (28) days before the Final Approval Hearing,
17 the Parties **SHALL FILE** a Motion for Final Approval of Class Action Settlement. The
18 Motion **SHALL INCLUDE AND ADDRESS** any Objections or responses received as of
19 the filing date.

20 8. **APPLICATION FOR ATTORNEY FEES, COSTS, AND CLASS**
21 **REPRESENTATIVE SERVICE AWARD:** No later than twenty-one (21) days before
22 the Final Approval Hearing, Class Counsel **SHALL FILE** an application for attorney fees,
23 costs, and a Class Representative Service Award. Class Counsel **SHALL PROVIDE**
24 documentation detailing the number of hours incurred by attorneys in litigating this action,
25 supported by detailed time records, as well as hourly compensation to which those
26 attorneys are reasonably entitled. Class Counsel **SHALL ADDRESS** the appropriateness
27 of any upward or downward departure in the lodestar calculation, as well as reasons why a
28 percentage-of-the-fund approach to awarding attorney fees may be preferable in this case

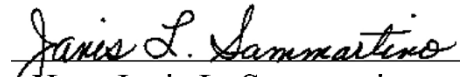
1 and why any upward or downward departure from the 25% benchmark may be merited.
2 Class Counsel **SHALL BE PREPARED** to address any questions the Court may have
3 regarding the application for fees at the Final Approval Hearing.

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

Event	Date
Deadline for Defendants to send Settlement Administrator a list of Class Members	Within 14 days of the date on which this Order is electronically docketed
Deadline for Settlement Administrator to mail Proposed Notice	Within 28 days of the date on which this Order is electronically docketed
Deadline for Objections	Within 30 days of the original mailing of the Proposed Notice
Deadline for the Parties to file a motion for final approval of class action settlement	No later than 28 days prior to the Final Approval Hearing
Deadline for Class Counsel to file motion for attorneys' fees and costs and Class Representative Service Award	No later than 21 days prior to the Final Approval Hearing
Deadline for Claims Administrator to prepare and Class Counsel to file Declaration of Compliance with Class Notice requirements	No later than 16 days prior to the Final Approval Hearing
Final Approval Hearing	August 11, at 1:30 p.m.

IT IS SO ORDERED.

Dated: April 25, 2022


Hon. Janis L. Sammartino
United States District Judge

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