UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

#95/97

CIVIL MINUTES - GENERAL

Case No.	CV 15-7985 PSG (MRWx)	Date	February 6, 2023
Title	Vidrio v. United Airlines, Inc.		

Present: The Honorable	Philip S. Gutierrez, United States District Judge

Wendy Hernandez	Not Reported
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiff(s):	Attorneys Present for Defendant(s):
Not Present	Not Present

Proceedings (In Chambers): Order GRANTING motion for preliminary approval of class action and PAGA action settlement.

Before the Court is an unopposed motion for preliminary approval of class action and PAGA representative action settlement filed by named Plaintiffs Felicia Vidrio ("Vidrio") and Paul Bradley ("Bradley"), the Class, the California Labor and Workforce Development Agency, and the Aggrieved Employees (collectively, "Plaintiffs"). *See generally* Dkt. # 97 ("*Mot.*"). The Court finds this matter appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78; L.R. 7-15. Having considered the moving papers, the Court **GRANTS** the motion for preliminary approval.

I. Background

A. Factual and Procedural History

Plaintiffs are current and former flight attendants for Defendant United Airlines, Inc. ("Defendant") and sought statutory and civil penalties for alleged violations of California Labor Code § 226. *See Declaration of Kirk Hanson*, Dkt. # 95-1 ("*Hanson Decl.*"), ¶ 13, Ex. 1 ("*Settlement*"), ¶ 14. Plaintiffs brought this action, alleging that the wage statements provided by Defendant violate California Labor Code § 226(a)(2), (a)(8), and (a)(9) for failing to list the total hours worked, the hourly rates, the number of hours worked at each applicable rate, and Defendant's physical address. *See id.*

In August 2015, Vidrio and Bradley filed separate actions against Defendant in California state court, which Defendant removed to this Court. *See generally* Dkt. # 1, Ex. A. Pursuant to the parties' stipulation, the Court consolidated the actions in February 2016. *See generally* Dkt. # 20. Plaintiffs then filed the operative consolidated complaint, *see Amended Consolidated*

Complaint, Dkt. # 24 ("*Am. Compl.*"), which asserts two causes of action based on Defendant's alleged violations of § 226:

> First Cause of Action: Illegal Wage Statement PAGA Penalties ("PAGA Claim"). *Id.* ¶¶ 11–17.
>
> Second Cause of Action: Illegal Wage Statements, Cal. Lab. Code § 226 ("Class Claim"). *Am. Compl.* ¶¶ 18–30.

Shortly thereafter, the Court granted Plaintiffs' motion for class certification as to the second cause of action. *See generally* Dkt. # 32. The parties then filed cross-motions for summary judgment. *See generally* Dkts. # 34, 41. In March 2017, the Court denied Plaintiffs' motion and granted Defendant's motion. *See* Dkt. # 47, at 4–9. Plaintiffs appealed to the Ninth Circuit, *see generally* Dkt. # 50, which consolidated the case for appeal with *Ward v. United Airlines, Inc.*, No. C 15-02309 WHA, 2016 WL 3906077 (N.D. Cal. July 19, 2016), and certified two questions to the California Supreme Court. *See generally* Dkt. # 52. The California Supreme Court issued its response in June 2020. *See generally Ward v. United Airlines, Inc.* (*Ward I*), 9 Cal. 5th 732 (2020). The Ninth Circuit subsequently reversed this Court's entry of summary judgment in favor of Defendant and remanded each case with instructions to modify the class definitions pursuant to the *Ward* test and to determine whether Defendant's wage statements violate California Labor Code § 226. *Ward v. United Airlines, Inc.* (*Ward II*), 986 F.3d 1234, 1245 (9th Cir. 2021).

On remand, the class definition was modified. *See generally* Dkt. # 65. Then, the parties filed a second round of cross-motions for summary judgment. *See generally* Dkts. # 72, 74. The Court granted Defendant's motion regarding § 226(a)(8), finding the wage statement address requirement satisfied. *See* Dkt. # 81. The Court also granted Plaintiffs' motion for summary judgment regarding § 226(a)(9), leaving only Plaintiffs' § 226(a)(2) claim for trial. *See id.*; *see also Settlement* ¶ 14.

On September 13, 2022, the parties participated in mediation with Michael J. Loeb serving as the mediator. *See Mot.* 4:8–10. Though the parties came to an agreement that day, they continued to negotiate the specific terms of settlement over the next few months. *See id.* The finalized settlement agreement (the "Settlement") is now before the Court for approval. *See generally Settlement*.

B. Settlement Terms

The parties agreed to a non-reversionary Gross Settlement Amount of $53.5 million to resolve both the class and PAGA claims. *Id.* ¶¶ 5, 17. The Settlement Class is defined as "[a]ll flight attendants who were employed by Defendant and domiciled (in other words, based for collective bargaining agreement purposes) at a California airport at any time between August of 2014 and March 31, 2023." *Id.* ¶ 1. The $53.5 million Gross Settlement Amount includes an award of attorneys' fees and costs, service awards for each Class Representative, settlement administration fees, and the PAGA Settlement Amount of $300,000—75% of which will be distributed to the California Labor and Workforce Development Agency ("LWDA"). *Id.* ¶¶ 18–21, 16. After these deductions, the Net Settlement Amount to be distributed to the Settlement Class, which includes 25% of the PAGA Settlement Amount, is approximately $35,211,748.90. *See Mot.* 5:26–6:3.

Each Class Member will be entitled to a pro rata share of the Net Settlement Amount based on the number of wage statements each Class Member received during the Class Period. *See Settlement* ¶ 22; *Mot.* 9:27–10:2. Plaintiffs estimate that the average gross individual recovery for Settlement Class Members will be about $4,903.36 and an average net individual recovery of approximately $3,240.83. *See Mot.* 9:15–17, 10:21–22. Class Members will then have 180 days after the settlement checks are mailed to cash their checks. *See Settlement* ¶ 24. After 180 days, any uncashed checks will be voided, and the remaining balance of the Net Settlement Amount will be redistributed among the Class. *Id.* And in the event redistribution is economically unfeasible based on the cost, the balance will be distributed to the *cy pres* recipient Legal Aid at Work. *Id.*

In exchange, Settlement Class Members agree to release Defendant of specified claims relating only to the Labor Code § 226 violations that were certified as class claims in the lawsuit and based upon the factual allegations in the complaint. *Settlement* ¶ 26. And the Settlement explicitly excludes unpaid wage claims from the Released Claims. *Id.*

Plaintiffs now bring this motion for preliminary approval of the Settlement. *See generally Mot.* Plaintiffs ask the Court to (1) grant preliminary approval of the Settlement as to both the class and PAGA actions, (2) appoint Rust Consulting, Inc. as the Settlement Administrator, (3) approve and authorize the mailing of the proposed notice forms, *see Settlement*, Ex. A, and (4) schedule a final approval and fairness hearing. *See generally* Dkt. # 95-2.

II. Legal Standard

The approval of a class action settlement is a two-step process under Federal Rule of Civil Procedure 23(e) in which the court first determines whether a proposed class action settlement deserves preliminary approval and then, after notice is given to class members, whether final approval is warranted. *See In re Am. Apparel, Inc. S'holder Litig.*, No. CV 10-6352 MMM (CGx), 2014 WL 10212865, at *5 (C.D. Cal. July 28, 2014). "At the preliminary approval stage, a court determines whether a proposed settlement is within the range of possible approval and whether or not notice should be sent to class members." *True v. Am. Honda Motor Co.*, 749 F. Supp. 2d 1052, 1063 (C.D. Cal. 2010) (citation omitted). Preliminary approval amounts to a finding that the terms of the proposed settlement warrant consideration by members of the class and a full examination at a final approval hearing. *See Manual for Complex Litig.* (Fourth) § 13.14 (2004).

Preliminary approval is appropriate if "the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval." *Ma v. Covidien Holding, Inc.*, No. SACV 12-2161 DOC, 2014 WL 360196, at *4 (C.D. Cal. Jan. 31, 2014); *see also Eddings v. Health Net, Inc.*, No. CV 10-1744 JST (RZx), 2013 WL 169895, at *2 (C.D. Cal. Jan. 16, 2013).

After notice is given to the class, preliminary approval is followed by a review of the fairness of the settlement at a final fairness hearing and, if appropriate, a finding that it is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2); *see also Lane v. Facebook, Inc.*, 696 F.3d 811, 818 (9th Cir. 2012); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998). In making this determination, the district court must balance many factors:

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

Hanlon, 150 F.3d at 1026; *see also Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003); *Officers for Just. v. Civ. Serv. Comm'n of S.F.*, 688 F.2d 615, 625 (9th Cir. 1982) (noting that the list of factors is "by no means an exhaustive list").

The district court must approve or reject the settlement as a whole. *See Hanlon*, 150 F.3d at 1026 ("It is the settlement taken as a whole, rather than the individual component parts, that must be examined for overall fairness."). The Court may not delete, modify, or rewrite particular provisions of the settlement. *See Dennis v. Kellogg Co*., 697 F.3d 858, 868 (9th Cir. 2012); *Hanlon*, 150 F.3d at 1026.

III. Analysis of the Settlement Agreement

A. Fair and Honest Negotiations

All evidence supports the conclusion that the Settlement Agreement was arrived at through fair and honest negotiations. The parties settled the matter after eight years of hard-fought litigation, including class certification, an extensive appeals process, and two rounds of cross-motions for summary judgment. *See Hanson Decl.* ¶ 22; Dkts. # 34, 41, 72, 74. These significant litigation activities suggest that the parties were well informed and had sufficient information to assess the merits of their claims and defenses. *See Ayala v. UPS Supply Chain Sols., Inc.*, No. EDCV 20-117 PSG (AFMx), 2021 WL 4497881, at *8 (C.D. Cal. Aug. 24, 2021) (finding that filing an opposed motion for class certification weighed in favor of preliminary approval).

The Court is also convinced that the Settlement was not a product of collusion. In general, evidence that a settlement agreement is arrived at through genuine arms-length bargaining with a mediator supports a conclusion that the settlement is fair. *See Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) ("We put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution."); *Hanlon*, 150 F.3d at 1029 (explaining that the mediator's presence assured the court that the Settlement was "not the result of collusion or a sacrifice of interests of the class"); *see also Aarons v. BMW of N. Am., LLC*, No. CV 11-7667 PSG (CWx), 2014 WL 4090564, at *10 (C.D. Cal. Apr. 29, 2014) (declining to apply a presumption but considering the arms-length nature of the negotiations as evidence of reasonableness). Here, the initial settlement was reached during private mediation with the assistance of a respected wage and hour mediator, Mr. Michael Loeb. *See Hanson Decl.* ¶ 22. And the parties then engaged in further negotiations over several months, sometimes with the assistance of Mr. Loeb, to finalize the Settlement. *See Hanson Decl.* ¶ 22. The evidence of extensive negotiations strongly supports approval, and nothing indicates that the negotiations were dishonest or collusive in any way. *See Sarabi v. Weltman, Weinberg & Reis Co., L.P.A.*, No. CV 10-1777 AJB (NLSx), 2012 WL 3809123, at *1 (S.D. Cal. Sept. 4, 2012) (holding that a

settlement should be granted preliminary approval after the parties engaged in extensive negotiations).

The Court is therefore satisfied that the Settlement is the product of fair and honest negotiations.

B. Settlement Amount

To evaluate whether a settlement falls within the range of possible approval, "courts primarily consider plaintiffs' expected recovery balanced against the value of the settlement offer." *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007).

Under California Labor Code § 226(e)(1), recovery at trial would be capped at $4,000 per Class Member. *See* Cal. Lab. Code § 226(e)(1). Plaintiffs estimate the maximum potential value of the claims to therefore be $43,460,000. *Mot.* 9:19–24. Comparing this to the Gross Settlement Amount of $53.5 million and Net Settlement Amount of roughly $35.2 million, the Settlement represents between 81% and 100% of the Class Members' maximum potential recovery at trial. *Mot.* 10:21–16. This is well within the range of possible approval. *Cf. Ayala*, 2021 WL 4497881, at *8 (approving settlement that was slightly less than 10% of the maximum possible recovery); *Martinez v. Helzberg's Diamond Shops*, No. EDCV 20-1085 PSG (SHKx), 2021 WL 4730914, at *8 (C.D. Cal. Apr. 12, 2021) (approving settlement that was only about 11% of expected recovery); *Brown v. CVS Pharmacy, Inc.*, No. CV 15-7631 PSG (PJWx), 2017 WL 3494297, at *4 (C.D. Cal. Apr. 24, 2017) (approving settlement that was approximately 27% of expected recovery).

Further, the method of calculation for each individual Class Member's settlement payment is reasonable and fair to all Class Members, providing payments proportionally based upon the number of wage statements received during the Class Period. *See Settlement* ¶ 22. It is also important to note that the Settlement specifically provides that the Gross Settlement Amount is non-reversionary and that no employer-side payroll taxes will be deducted from the Settlement amount. *See id.* ¶¶ 17, 23. And the Court recognizes a significant nonmonetary benefit of settlement approval—specifically, Defendant's remedial measures to bring future wage statements into compliance with California Labor Code § 226(a). *See Mot.* 23:24–24:12.

Moreover, the Settlement confers a benefit on Class Members who would face a risk of no recovery and ongoing expenses if forced to proceed with the litigation. *See Vazquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 489 (E.D. Cal. 2010) (explaining that "the risk of

continued litigation balanced against the certainty and immediacy of recovery from the Settlement" is a relevant factor (citing *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000))). The Court thus finds that "the risk of continued litigation balanced against the certainty and immediacy of recovery from the Settlement" factor favors preliminary approval. *See id.*

Given the ongoing risks of litigation and the relative value of the Class's recovery, the Court concludes that the settlement amount is within the range of approval.

C. PAGA Amount

A plaintiff bringing a PAGA claim "does so as a proxy or agent of the state's labor law enforcement agencies." *Arias v. Superior Ct.*, 46 Cal. 4th 969, 986 (2009). A judgment in a private employment action therefore "binds not only that employee but also the state labor law enforcement agencies." *Id.* When a PAGA claim is settled, courts are tasked with determining whether the relief provided is "genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public." *O'Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d 1110, 1133 (N.D. Cal. 2016) (citation omitted). This is of particular importance in a mixed class/PAGA action settlement when PAGA claims can be "used merely as a bargaining chip, wherein the rights of individuals who may not even be members of the class and the public may be waived for little additional consideration in order to induce the employer to agree to a settlement with the class." *Id.* But courts have still recognized that "in wage and hour class actions that settle, . . . very little of the total settlement is paid to PAGA penalties in order to maximize payments to the class members." *See, e.g.*, *Magadia v. Wal-Mart Assocs., Inc.*, 384 F. Supp. 3d 1058, 1101 (N.D. Cal. 2019); *see also JD Tamimi v. SGS N. Am., Inc.*, SACV 19-965 PSG (KSx), 2021 WL 3417645, at *9 (C.D. Cal. Mar. 2, 2021) (recognizing that courts approve PAGA allocations of 0% to 2% of the total settlement).

The parties have agreed to a PAGA penalty of $300,000. *Settlement* ¶ 21. Pursuant to California Labor Code § 2699(i), 75% of the PAGA Amount ($225,000) will go to the LWDA, and the remaining 25% ($75,000) will be distributed to participating Class Members on a pro rata basis. *See Settlement* ¶¶ 21, 22. Further, the LWDA's portion of the PAGA allocation represents 0.56% of the Gross Settlement Amount, which is within the range typically approved by courts. *See, e.g.*, *In re M.L. Stern Overtime Litig.*, No. CV 07-0118 BTM (JMAx), 2009 WL 995864, at *1 (S.D. Cal. Apr. 13, 2009) (approving PAGA amount that was 2% of overall settlement); *Hopson v. Hanesbrands, Inc.*, No. CV 08-0844 EDL, 2008 WL 3385452, at *1 (S.D. Cal. Apr. 13, 2009) (approving a PAGA settlement of 0.3%).

The Court is convinced that the PAGA Amount is genuine and meaningful. And the agreed upon allocation to the LWDA does not raise concerns that Plaintiffs are skirting the "special responsibility to [their] fellow aggrieved workers" or using the PAGA claim "merely as a bargaining chip, wherein the rights of individuals . . . may be waived for little additional consideration in order to induce the employer to agree to a settlement." *See O'Connor*, 201 F. Supp. 3d at 1134. Accordingly, the Court finds this settlement of PAGA claims reasonable.

D. Settlement Class Release

The Court also finds the scope of the Settlement Release to be proper. The Settlement provides that the Settlement Class releases the Defendant and other "United Releasees" from any claims a Class Member has or had only with respect to California Labor Code §§ 226(a)(2), (a)(8), and (a)(9) during the Class or PAGA period and based upon the factual allegations in the pleadings. *Settlement* ¶ 26. The Settlement Release, however, explicitly states that no claims relating to unpaid wages are released. *See id.* ¶¶ 26, 28–29. Further, Class Members only waive their California Civil Code § 1542 rights regarding the released claims. *See id.* As such, the narrow release of only "Labor Code section 226 wage statement *formatting claims* alleged and certified in this action and wage statement *formatting claims* based upon the factual allegations in the Complaint" weighs in favor of granting preliminary approval. *See Mot.* 6:23–25.

E. Attorneys' Fees and Costs

When approving attorneys' fees in common fund cases, courts in the Ninth Circuit have discretion to apply the percentage-of-the-fund method or the lodestar method to determine reasonable attorneys' fees. *See Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000); *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 944–45 (9th Cir. 2011) (finding that when a settlement establishes a common fund for the benefit of a class, courts may use either method to gauge the reasonableness of a fee request but encouraging courts to employ a second method as a cross-check after choosing a primary method).

If employing the percentage-of-the-fund method, the "starting point" or "benchmark" award is 25% of the total settlement value. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048–50 (9th Cir. 2002); *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993). A court may exceed the benchmark but must explain its reasons for so doing. *See Powers*, 229 F.3d at 1255–57.

Calculation of the lodestar, which measures the lawyers' investment of time in the litigation, provides a check on the reasonableness of the percentage award. *Vizcaino*, 290 F.3d at 1050. To determine attorneys' fees under the lodestar method, a court must multiply the reasonable hours expended by a reasonable hourly rate. *See In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1294 n.2 (9th Cir. 1994). The court may then enhance the lodestar with a "multiplier," if necessary, to arrive at a reasonable fee. *Id.*

In this case, Class Counsel requests a fee award of one-third of the Gross Settlement Amount, or $17,833,333.33, plus $110,000 for litigation costs and expenses. *Settlement* ¶ 18. Class Counsel provides an analysis under the *Vizcaino* factors and persuasive arguments that the one-third fee is reasonable. *See Mot.* 14:16–19:24. Specifically, unsettled legal questions made this case risky for Class Counsel, who expended significant time and effort and took the matter on a contingency basis. *Id.* 17:2–18:19. Still, Class Counsel was able to negotiate a settlement amount that is over $10 million more than what could have been recovered by the Class Members at trial and includes Defendant's remedial measures to ensure paystubs reflect the hourly rates and hours worked at that rate. *Id.* 15:15–19.

The protracted and hard-fought nature of the litigation, which ultimately produced important legal precedent for California employers and workers as well as the results achieved could potentially support a departure from the federal benchmark. *See Mot.* 15:20–16:7. Plaintiffs assure the Court that they will provide further memoranda and declarations justifying the requested fee and costs award. And the Court agrees that further analysis of the *Vizcaino* factors and detailed accounting of counsel's work on the case is necessary so that the Court can evaluate the reasonableness of the fee request under both the percentage-of-the-fund approach and the lodestar method. The Court also cannot make any determination as to the reasonableness of Counsel's request for $110,000 in litigation costs and expenses as Plaintiffs have not provided any support for that number. *See Mot.* 19:26–20:5.

The Court thus **ORDERS** Class Counsel to submit a brief justifying the upward departure from the benchmark under the *Vizcaino* factors in greater detail. *See Vizcaino*, 290 F.3d at 1048–50 (examining (1) the results achieved; (2) the risk of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee and the financial burden carried by plaintiffs; and (5) awards made in similar cases). Class Counsel is further instructed to provide the requested hourly rates and billing records showing the hours expended in this case, as well as an explanation of whether the lodestar multiplier is appropriate in comparison with similar cases. Finally, Class Counsel must submit a detailed summary of its actual costs and expenses for the Court's consideration.

F. Service Awards

"Incentive awards are fairly typical in class action cases." *Rodriguez*, 563 F.3d at 958. When considering requests for incentive awards, courts consider five principal factors:

> (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; [and] (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.

Van Vranken v. Atl. Richfield Co., 901 F. Supp. 294, 299 (N.D. Cal. 1995). Further, courts also typically examine the propriety of an incentive award by comparing it to the total amount other Class Members will receive. *See Staton*, 327 F.3d at 975.

Here, the two Class Representatives, Vidrio and Bradley, seek service awards of $20,000 each—a total of $40,000—in addition to their individual settlement payments. *Settlement* ¶ 19. Each service award is roughly six times greater times the average net Class Member award of $3,240.84 and is only 0.056%, or cumulatively 0.11%, of the Net Settlement Amount. These proportions place the requested service awards within the range of approval. *See, e.g.*, *Dawson v. Hitco Carbon Composites, Inc.*, No. CV 16-07337 PSG (FFMx), 2019 WL 7842550, at *10 (C.D. Cal. Nov. 25, 2019) (finding an enhancement award of 5 times the average class award reasonable); *Flo & Eddie, Inc. v. Sirius XM Radio, Inc.*, No. CV 13-5693 PSG (GJSx), 2017 WL 4685536, at *11 (C.D. Cal. May 8, 2017) (approving an incentive award, in part, because it reflected only 0.2% of the total settlement). But the Court will ultimately determine the reasonableness of the requested service awards when Plaintiffs provide further memoranda and declarations along with their final approval motion, explaining the time and effort Vidrio and Bradley each devoted to the litigation. *See Mot.* 22:1–3.

Before the final approval hearing, the Court **ORDERS** Plaintiffs to submit a memorandum further justifying their award. Plaintiffs should also submit declarations supporting the service award, including a detailed description of Plaintiffs' efforts in pursuit of this case.

G. Administration Costs

The Settlement provides that Settlement Administrator, Rust Consulting, Inc., will be paid to administer the Settlement out of the Gross Settlement Amount. *Settlement* ¶ 20. Rust Consulting, Inc. estimates the cost of administrating the Settlement will be $79,917.81. *Hanson Decl.* ¶ 54, Ex. 2. Given the class size of approximately 10,865 individuals, *see Mot.* 1:17, this estimate appears reasonable. *See Gatdula v. CRST Int'l, Inc.*, No. 11–cv–01285–VAP, 2015 WL 12637656, at *9 (C.D. Cal. Aug. 26, 2015) (preliminarily approving an estimated $80,000 in administration costs for a class of roughly 10,000 members).

H. Remaining Funds

The Settlement provides that a Class Member will have 180 days from date of issuance to cash his or her settlement check. *Settlement* ¶¶ 24, 40. After 180 days, checks will automatically be voided. *Id.* In the event there is any remaining balance in the common fund as a result of voided uncashed checks, the amount will be redistributed on an equal basis to the Class Members who cashed their settlement checks. *Id.* ¶ 24. If the cost of redistribution, however, is not economically feasible, the remaining amount will be donated *cy pres* to Legal Aid at Work. *Id.*

The *cy pres* doctrine permits courts to put unclaimed portions of a settlement fund "to its next best compensation use, e.g., for the aggregate, indirect, prospective benefit of the class." *Masters v. Wilhemina Model Agency, Inc.*, 472 F.3d 423, 436 (9th Cir. 2007). The Ninth Circuit requires all *cy pres* distributions to (1) address the objectives of the underlying statutes; (2) target the plaintiff class; and (3) provide reasonable certainty that any member will be benefitted. *See Naschin v. AOL, LLC*, 663 F.3d 1034, 1036 (9th Cir. 2011) (emphasizing that whether a *cy pres* remedy is fair, adequate and reasonable depends upon whether the award "account[s] for the nature of the plaintiffs' lawsuit, the objectives of the underlying statues, and the interests of the silent class members."). "A *cy pres* award meets the objectives of the underlying statute when the *cy pres* recipient's mission and the statute's goals have a non-tenuous connection." *Hofmann v. Dutch LLC*, CV 14-02418 GPC JLB, 2017 WL 840646, at *3 (S.D. Cal. Mar. 2, 2017). Further, there must be sufficient relation between the charity selected for *cy pres* distribution and the interests of the silent class members. *See Dennis*, 697 F.3d at 866.

Class Counsel justifies the appointment of Legal Aid at Work as an appropriate recipient of the funds by pointing to its work on behalf of low-wage California workers in wage and hour claims. *See Mot.* 23:7–12. While the Court finds that Legal Aid at Work bears a sufficient

relationship to the Class, such that the donation will be in the Class Members' interests, the Court cannot ascertain whether a potential conflict of interest exists between either the named Plaintiffs or Class Counsel and the *cy pres* recipient. Plaintiffs therefore must represent to the Court in their final approval papers that no such conflict of interest exists.

As such, the Court **ORDERS** Class Counsel to submit briefing on whether any party or Plaintiffs' or Defendant's counsel or any party's family has any preexisting relationship to the organization and explain how the parties came to choose the *cy pres* recipient.

IV. Notice of Settlement

Before the final approval hearing, the Court requires adequate notice of the settlement be given to all class members. Federal Rule of Civil Procedure 23 provides:

> For any class certified under Rule 23(b)(3) . . . the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort . . .The notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

Fed. R. Civ. P. 23(c)(2)(B). "Notice is satisfactory if it 'generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.'" *Churchill Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (quoting *Mendoza v. Tucson Sch. Dist. No. 1*, 623 F.2d 1338, 1352 (9th Cir. 1980)).

Plaintiffs have provided a proposed Notice of Class Action Settlement ("Notice") that sets forth in clear language: (1) the nature of the action and the essential terms of the Settlement; (2) the meaning and nature of the Class; (3) Class Counsel's application for attorneys' fees and the proposed service award payments for Plaintiffs; (4) the formula for calculation and distribution of the Net Settlement Amount; (5) how to opt out of the Settlement; (6) how to object to the Settlement; (7) information concerning the release; (8) the Court's procedure for

final approval of the Settlement; and (9) how to obtain additional information regarding this case and the Settlement. *See Settlement*, Ex. A.

The Court is also satisfied with the plan to notify Settlement Class Members. Within 15 business days of the Court's grant of preliminary approval, Defendant will provide to the Settlement Administrator the Settlement Class Member/Aggrieved Employee database, consisting of names, last known addresses, number of wage statement received during Class Period, and social security numbers. *Settlement* ¶ 34. The Settlement Administrator will cross-reference the addresses provided in the database with the U.S. Postal Service's National Change of Address List. *Id.* Notice will then be sent to the Settlement Class Members by First-Class United States Mail within ten days of receipt of the database. *Id.* ¶ 35. And "[t]he Settlement Administrator shall perform a skip trace using the Social Security numbers provided by Defendant of Class Members whose Notices were returned as undeliverable." *Id.* Any Class Member who wishes to opt-out or object to the Settlement must do so within 30 days of the mailing. *Id.* ¶ 36, 38.

The Court finds the plan to notify Class Members as laid out in the Settlement satisfactory.

V. Conclusion

For the foregoing reasons, the Court **GRANTS** Plaintiffs' motion for preliminary approval of class action and PAGA action settlement. The Court **PRELIMINARILY APPROVES** the Settlement, **APPOINTS** Rust Consulting, Inc. as the Settlement Administrator, and **APPROVES** the proposed Class Notice Form. The final approval hearing is set for **June 16, 2023, at 1:30 p.m.**

At least 30 days before the final approval hearing, and in addition to the motion for final approval of class action and PAGA action settlement, the Court **ORDERS** Plaintiffs to file:

- a memorandum justifying Class Counsel's award of attorneys' fees and costs that includes declarations supporting the reasonableness of each attorney's requested hourly rate and itemized billing statements showing hours worked, hourly rates, expenses incurred thus far, and expenses to be incurred in the future. The memorandum should explain in detail why an upward departure from the benchmark percentage rate is warranted. The memo should also explain why the

proposed multiplier to be applied to the lodestar value for the attorneys' fees is appropriate in this case;

- a memorandum justifying Plaintiffs' service awards with respect to the Gross Settlement Amount and the Individual Settlement Payments to Class Members, as well as declarations from Class Representatives supporting an award; and

- a memorandum addressing whether any conflict of interest exists between either Class Counsel, Defendant's counsel, the named Plaintiffs, or Defendant and the *cy pres* recipient. The memorandum should also explain how the parties came to choose the *cy pres* recipient and whether any party, Plaintiffs' or Defendant's counsel, or any party's family has any preexisting relationship to the organization.

IT IS SO ORDERED.

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