UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JEFFREY HOGUE, individually, and on behalf of all others similarly situated, Plaintiff, v. VERIZON BUSINESS NETWORK SERVICES, LLC, et al., Defendants.	Case No. CV 22-0852 FMO (MRWx) **ORDER RE: MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

Having reviewed and considered all the briefing filed with respect to plaintiff's Motion for Preliminary Approval of Class and PAGA Action Settlement (Dkt. 42, "Motion"), the court finds that oral argument is not necessary to resolve the Motion, see Fed. R. Civ. P. 78(b); Willis v. Pac. Mar. Ass'n, 244 F.3d 675, 684 n. 2 (9th Cir. 2001), and concludes as follows.

BACKGROUND

On December 27, 2021, Jeffrey Hogue ("Hogue" or "plaintiff"), a former salesperson for defendant, filed this putative class action in California state court against Verizon Business Network Services, LLC[1] ("defendant" or "Verizon Business") asserting claims for: (1) failure to pay minimum wages, Cal Lab. Code §§ 204, 1194, 1194.2, 1197; (2) failure to pay overtime compensation, Cal. Lab. Code §§ 1194, 1198; (3) failure to provide meal periods, Cal. Lab. Code

[1] Although the Complaint also named Verizon Business Network Services, Inc., (see Dkt. 1-2, Complaint at ¶ 1), that entity had been converted to Verizon Business Network Services, LLC prior to the filing of the action. (See Dkt. 1, Notice of Removal ("NOR") at ¶ 2 n. 1).

§§ 226.7, 512; (4) failure to authorize and permit rest breaks, Cal Lab. Code § 226.7; (5) failure to indemnify necessary business expenses, Cal. Lab. Code § 2802; (6) failure to timely pay final wages at termination, Cal. Lab. Code §§ 201-203; (7) failure to provide accurate wage statements, Cal. Lab. Code § 226; and (8) unfair business practices, Cal. Bus. & Prof. Code §§ 17200, et seq. (Dkt. 1-2, Complaint at ¶¶ 7, 32-96). Plaintiff alleges that Verizon misclassified him as exempt from California's overtime requirements, when in fact plaintiff and class members should have been classified as non-exempt. (See Dkt. 1-2, Complaint at ¶ 14). On February 7, 2022, defendant removed the action pursuant to the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1332(d). (See Dkt. 1, NOR at ¶¶ 10-11).

On May 8, 2023, the parties participated in a mediation, (see Dkt. 35, Status Report Re: Settlement Following May 8, 2023, Privately Mediated Settlement Conference), and on May 11, 2023, indicated that they reached a settlement. (See id.). In connection with the settlement, plaintiff filed the operative First Amended Complaint ("FAC"), which added a claim pursuant to the California Private Attorneys General Act ("PAGA"), Cal. Lab. Code §§ 2698, et seq. (See Dkt. 46, FAC at ¶¶ 98-106).

The parties have defined the settlement class as "all individuals who worked for Verizon Business in California in a Covered Client Executive position during the Class Period." (Dkt. 43-1, Joint Stipulation of Class and PAGA Representative Action Settlement and Release ("Settlement Agreement") at ¶ 2). "'Covered Client Executive' means all job positions for Verizon Business's employees in California with the job titles Client Executive, Senior Client Executive, Enterprise Sales Senior Account Manager, Client Account Manager, and variations of these titles." (Id. at ¶ 15). The Class Period is defined as the "period from December 27, 2017 through the date the Court grants Preliminary Approval of the Settlement." (Id. at ¶ 9).

Pursuant to the settlement, defendant will pay a non-reversionary gross settlement amount of $682,000, (see Dkt. 43-1, Settlement Agreement at ¶¶ 23, 29); (Dkt. 42, Memorandum of Points and Authorities ("Memo.") at 4), which will be used to pay the class and PAGA members, the PAGA payment to the California Labor & Workforce Development Agency ("the LWDA"), attorney's fees and costs, the class representative's service payment, and the Settlement Administrator's

Expenses.[2] (See Dkt. 43-1, Settlement Agreement at ¶¶ 23, 29); (Dkt. 42, Memo. at 9). The Settlement Agreement provides for "no less than . . . one-third (1/3) of the [g]ross [s]ettlement [a]mount payable to Class Counsel's reasonable attorneys' fees," (Dkt. 43-1, Settlement Agreement at ¶ 4); costs in the amount of $23,000, (id. at ¶ 5); a service payment of $7,500 for plaintiff, (id. at ¶ 11); and a payment of $37,500 to the LWDA. (Id. at ¶¶ 27, 35). The proposed settlement administrator, ILYM Group, Inc. ("ILYM"), will be paid no more than $7,000. (Id. at ¶¶ 47-48). The net settlement amount is expected to be approximately $361,166.67, (see Dkt. 42-1, Declaration of Kane Moon in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement ("Moon Decl.") at ¶ 30), which would result in an average individual payment of $3,278.27.[3] (See id.); (Dkt. 42, Memo. at 23).

In his Motion, plaintiff seeks an order: (1) preliminarily approving the proposed settlement; (2) certifying the proposed settlement class; (3) appointing Hogue as class representative; (4) appointing Moon Law Group, PC as class counsel; (5) appointing ILYM as settlement

---

[2] The gross settlement amount is subject to an escalation clause. (See Dkt. 43-1, Settlement Agreement at ¶ 23). Pursuant to the clause, Verizon "may elect to increase the Gross Settlement Amount if the total number of Covered Class Workweeks within the period of December 27, 2017 through May 8, 2023 exceeds 12,400 by an additional ten (10%) (i.e., if the Covered Class Workweeks within the period of December 27, 2017 through May 8, 2023 includes more than 1,240 additional Covered Class Workweeks) wherein the Gross Settlement Amount shall escalate on a pro-rata basis (i.e., the Gross Settlement Amount shall increase on a pro rata basis for each Covered Class Workweek in excess of 13,640 workweeks)." (Id. at ¶ 24). The Settlement Agreement provides that Verizon "shall have the option to (i) increase the [gross settlement amount] by the percentage in excess of the 10% difference between the Estimated Workweek Amount and the actual number of workweeks that accrued for all Class Members from December 27, 2017, to May 8, 2023, or (ii) modify the end date, to the extent there is any impact, of the Covered Class Workweeks, Covered PAGA Pay Periods, Released Class Claims, and/or Released PAGA Claims to an earlier date that would reduce the total number of Covered Class Workweeks proportionately to the excess percentage." (Id. at ¶ 63(h)).

[3] Individual class payments will be calculated as follows: "The numerator shall be the number of the Class Member's individual Covered Class Workweeks; the denominator shall be the total Covered Class Workweeks for all Class Members; this fraction shall be multiplied by the Net Settlement Amount." (Dkt. 43-1, Settlement Agreement at ¶ 63(f)). "'Covered Class Workweek' means any workweek during the Class Period in which a Class Member worked for Verizon Business in a Covered Client Executive job position in California." (Id. at ¶ 14).

administrator; (6) approving and ordering dissemination of the proposed class notice and forms; and (7) scheduling a final approval hearing. (See Dkt. 42, Motion at 2-3).

LEGAL STANDARDS

I. CLASS CERTIFICATION.

At the preliminary approval stage, the court "may make either a preliminary determination that the proposed class action satisfies the criteria set out in Rule 23 . . . or render a final decision as to the appropriateness of class certification."[4] Smith v. Wm. Wrigley Jr. Co., 2010 WL 2401149, *3 (S.D. Fla. 2010) (citation and footnote omitted); see also Sandoval v. Roadlink USA Pac., Inc., 2011 WL 5443777, *2 (C.D. Cal. 2011) (citing Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 620, 117 S.Ct. 2231, 2248 (1997) ("Amchem")) ("Parties seeking class certification for settlement purposes must satisfy the requirements of Federal Rule of Civil Procedure 23[.]"). In the settlement context, a court must pay "undiluted, even heightened, attention" to the class certification requirements. Amchem, 521 U.S. at 620, 117 S.Ct. at 2248; In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prods. Liab. Litig., 895 F.3d 597, 606 (9th Cir. 2018) (same). "Such attention is of vital importance, for a court asked to certify a settlement class will lack the opportunity, present when a case is litigated, to adjust the class, informed by the proceedings as they unfold." Amchem, 521 U.S. at 620, 117 S.Ct. at 2248.

A party seeking class certification must first demonstrate that: "(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a). Courts refer to these requirements by the following shorthand: "numerosity, commonality, typicality and adequacy of representation[.]" Mazza v. Am. Honda Motor Co., Inc., 666 F.3d 581, 588 (9th Cir. 2012), overruled on other grounds by Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC, 31 F.4th 651 (9th Cir. 2022) (en banc) ("Olean Wholesale"). In addition to fulfilling the four prongs of Rule 23(a), the proposed class must

[4] All "Rule" references are to the Federal Rules of Civil Procedure.

meet at least one of the three requirements listed in Rule 23(b).[5] See Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 345, 131 S.Ct. 2541, 2548 (2011) ("Dukes").

"Before it can certify a class, a district court must be satisfied, after a rigorous analysis, that the prerequisites of both Rule 23(a) and" the applicable Rule 23(b) provision have been satisfied. Olean Wholesale, 31 F.4th at 664 (internal quotation marks omitted). A plaintiff "must prove the facts necessary to carry the burden of establishing that the prerequisites of Rule 23 are satisfied by a preponderance of the evidence." Id. at 665. However, Rule 23(b)(3) issues regarding manageability are "not a concern in certifying a settlement class where, by definition, there will be no trial." In re Hyundai and Kia Fuel Econ. Litig., 926 F.3d 539, 556-57 (9th Cir. 2019) (en banc) ("In re Hyundai").

---

[5] Rule 23(b) is satisfied if:

> (1) prosecuting separate actions by or against individual class members would create a risk of:
>
> (A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or
>
> (B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests;
>
> (2) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole; or
>
> (3) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:
>
> (A) the class members' interests in individually controlling the prosecution or defense of separate actions;
>
> (B) the extent and nature of any litigation concerning the controversy already begun by or against class members;
>
> (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
>
> (D) the likely difficulties in managing a class action.

Fed. R. Civ. P. 23(b)(1)-(3).

II. FAIRNESS OF CLASS ACTION SETTLEMENT.

Rule 23 provides that "[t]he claims, issues, or defenses of a certified class – or a class proposed to be certified for purposes of settlement – may be settled . . . only with the court's approval." Fed. R. Civ. P. 23(e). "The primary concern of [Rule 23(e)] is the protection of th[e] class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties." Officers for Just. v. Civ. Serv. Comm'n of the City & Cnty. of San Francisco, 688 F.2d 615, 624 (9th Cir. 1982). Whether to approve a class action settlement is "committed to the sound discretion of the trial judge." Class Plaintiffs v. City of Seattle, 955 F.2d 1268, 1276 (9th Cir. 1992) (internal quotation marks omitted).

Approval of a class action settlement requires a two-step process – preliminary approval and the dissemination of notice to the class, followed by a later final approval. See Spann v. J.C. Penney Corp., 314 F.R.D. 312, 319 (C.D. Cal. 2016). Although "[c]loser scrutiny is reserved for the final approval hearing[,]" Harris v. Vector Mktg. Corp., 2011 WL 1627973, *7 (N.D. Cal. 2011), "the showing at the preliminary approval stage – given the amount of time, money, and resources involved in, for example, sending out . . . class notice[] – should be good enough for final approval." Spann, 314 F.R.D. at 319; see also 4 Newberg on Class Actions § 13:10 (6th ed. 2023) ("[S]ending notice to the class costs money and triggers the need for class members to consider the settlement, actions which are wasteful if the proposed settlement [is] obviously deficient from the outset."). The court may grant preliminary approval and direct notice in a reasonable manner to all class members who would be bound by the settlement if the parties provide sufficient information to show that the court will likely be able to: (1) "approve the proposal under Rule 23(e)(2)"; and (2) "certify the class for purposes of judgment on the [settlement] proposal." Fed. R. Civ. P. 23(e)(1)(B); see Macy v. GC Servs. Ltd. P'ship, 2019 WL 6684522, *1 (W.D. Ky. 2019) ("The standard for preliminary approval was codified in 2018, with Rule 23 now providing for notice to the class upon the parties showing that the court will likely be able to approve the proposed settlement under the final-approval standard contained in Rule 23(e)(2)."); 4 Newberg on Class Actions § 13:10 (6th ed. 2023) ("In 2018, Congress codified this approach into Rule 23. Rule

23(e)(1)(B) now sets forth the grounds for the initial decision to send notice of a proposed settlement to the class[.]").

"At this stage, the court may grant preliminary approval of a settlement and direct notice to the class if the settlement: (1) appears to be the product of serious, informed, non-collusive negotiations; (2) has no obvious deficiencies; (3) does not improperly grant preferential treatment to class representatives or segments of the class; and (4) falls within the range of possible approval." Spann, 314 F.R.D. at 319 (internal quotation marks omitted); see Bronson v. Samsung Elecs. Am., Inc., 2019 WL 5684526, *7 (N.D. Cal. 2019) (same); see also 2018 Adv. Comm. Notes to Amendments to Rule 23(e)(1) (The types of information that should be provided to the court in deciding whether to send notice – i.e., that it will likely approve the settlement under Rule 23(e)(2) and certify the class for purposes of settlement – "depend on the specifics of the particular class action and proposed settlement." "[G]eneral observations" as to the types of information that should be provided include, but are not limited to, the following: (1) "the extent and type of benefits that the settlement will confer on the members of the class" and if "funds are . . . left unclaimed, the settlement agreement ordinarily should address the distribution of those funds"; (2) "information about the likely range of litigated outcomes, and about the risks that might attend full litigation"; (3) "[i]nformation about the extent of discovery completed in the litigation or in parallel actions"; (4) "information about the existence of other pending or anticipated litigation on behalf of class members involving claims that would be released under the proposal"; (5) "the proposed handling of an award of attorney's fees under Rule 23(h)"; (6) "any agreement that must be identified under Rule 23(e)(3)"; and (7) "any other topic that [the parties] regard as pertinent to the determination whether the proposal is fair, reasonable, and adequate.").

DISCUSSION

I. CLASS CERTIFICATION.

A. Rule 23(a) Requirements.

1. **Numerosity**.

A putative class may be certified only if it "is so numerous that joinder of all members is impracticable[.]" Fed. R. Civ. P. 23(a)(1). "Although the size of the class is not the sole

determining factor, . . . where a class is large in numbers, joinder will usually be impracticable." A.B. v. Hawaii State Dep't of Educ., 30 F.4th 828, 835 (9th Cir. 2022) (internal quotation marks omitted). "As a general matter, courts have found that numerosity is satisfied when class size exceeds 40 members[.]" Slaven v. BP Am., Inc., 190 F.R.D. 649, 654 (C.D. Cal. 2000); see Tait v. BSH Home Appliances Corp., 289 F.R.D. 466, 473-74 (C.D. Cal. 2012) (same).

Here, the class is so numerous that joinder is impracticable. The settlement class includes approximately 122 members, (see Dkt. 42, Memo. at 14), which easily exceeds the minimum threshold for numerosity.

2. **Commonality**.

The commonality requirement is satisfied if "there are questions of law or fact common to the class[.]" Fed. R. Civ. P. 23(a)(2). Proof of commonality under Rule 23(a) is "less rigorous" than the related preponderance standard under Rule 23(b)(3). See Hanlon v. Chrysler Corp., 150 F.3d 1011, 1019 (9th Cir. 1998), overruled on other grounds as recognized by Castillo v. Bank of Am., NA, 980 F.3d 723 (9th Cir. 2020); Mazza, 666 F.3d at 589. Commonality requires plaintiffs to demonstrate that their claims "depend upon a common contention . . . [whose] truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." Dukes, 564 U.S. at 350, 131 S.Ct. at 2551; see Wolin v. Jaguar Land Rover N. Am., LLC, 617 F.3d 1168, 1172 (9th Cir. 2010) (The commonality requirement demands that "class members' situations share a common issue of law or fact, and are sufficiently parallel to insure a vigorous and full presentation of all claims for relief.") (internal quotation marks omitted). "The plaintiff must demonstrate the capacity of classwide proceedings to generate common answers to common questions of law or fact that are apt to drive the resolution of the litigation." Mazza, 666 F.3d at 588 (internal quotation marks omitted). "This does not, however, mean that every question of law or fact must be common to the class; all that Rule 23(a)(2) requires is a single significant question of law or fact." Abdullah v. U.S. Sec. Assocs., Inc., 731 F.3d 952, 957 (9th Cir. 2013) (emphasis and internal quotation marks omitted); see Mazza, 666 F.3d at 589 (characterizing commonality as a "limited burden[,]" stating that it "only requires a single significant question of law or fact"). "The existence of shared legal issues with divergent factual predicates is sufficient, as is a

common core of salient facts coupled with disparate legal remedies within the class." Hanlon, 150 F.3d at 1019.

This case involves common class-wide questions that are apt to drive the resolution of the litigation. For example, the key legal issue is whether defendant improperly classified class members as exempt employees, thereby depriving them of the benefits afforded employees under state labor law. Also, the class claims are based on defendant's "standardized policies, practices, and procedures regarding exempt classification of employees," (see Dkt. 42, Memo. at 15), and whether such policies resulted, for example, in defendant's failure to pay minimum wages, provide lawful meal periods or rest breaks, or provide complete and accurate wage statements. (See id.). Under the circumstances, the court finds that plaintiff has satisfied the commonality requirement. See, e.g., McConville v. Renzenberger, Inc., 2019 WL 9408103, *5 (C.D. Cal. 2019) ("This case involves common class-wide issues that are apt to drive the resolution of plaintiff's claims. There are significant common questions as to whether [defendant]'s meal-and rest-period policies were legally valid; whether [defendant] failed to pay all straight and overtime wages owed to class members; and whether [defendant] failed to provide accurate, itemized wage statements."); Dixon v. Cushman & Wakefield Western, Inc., 2021 WL 3861465, *6 (N.D. Cal. 2021) ("[T]he commonality requirement is satisfied because there are common questions of law and fact arising out of [defendant's] allegedly unlawful employment practices that effected all putative class members[.]"); Erami v. JPMorgan Chase Bank, N.A., 2018 WL 6133654, *3 (C.D. Cal. 2018) (finding commonality requirement met where legal question was whether plaintiff and class members were properly classified as exempt).

3. **Typicality**.

"Typicality refers to the nature of the claim or defense of the class representative, and not to the specific facts from which it arose or the relief sought." Ellis v. Costco Wholesale Corp., 657 F.3d 970, 984 (9th Cir. 2011) (internal quotation marks omitted). To demonstrate typicality, the class representative's claims must be "reasonably co-extensive with those of absent class members[,]" although "they need not be substantially identical." Hanlon, 150 F.3d at 1020; see Ellis, 657 F.3d at 984 ("Plaintiffs must show that the named parties' claims are typical of the

class."). "The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." Ellis, 657 F.3d at 984 (internal quotation marks omitted).

Here, plaintiff was subject to the same "illegal policies and practices that form the basis of the claims asserted in this case." (Dkt. 42, Memo. at 16). Thus, his claims arise from the same nucleus of facts as those of the class and are based on the same legal theory, i.e., that defendant's misclassification of plaintiff and class members was improper, and resulted in defendant's failure to provide the benefits afforded to non-exempt employees. See Brown v. NFL Players Ass'n., 281 F.R.D. 437, 442 (C.D. Cal. 2012) (typicality requirement satisfied where plaintiff's claims were based on "the same event or practice or course of conduct that g[ave] rise to the claims of other class members and . . . are based on the same legal theory") (internal quotation marks omitted). Additionally, the court is not aware of any facts that would subject plaintiff "to unique defenses which threaten to become the focus of the litigation." Hanon v. Dataproducts Corp., 976 F.2d 497, 508 (9th Cir. 1992) (internal quotation marks omitted). In short, plaintiff has satisfied the typicality requirement.

4. **Adequacy of Representation**.

"The named Plaintiffs must fairly and adequately protect the interests of the class." Ellis, 657 F.3d at 985 (citing Fed. R. Civ. P. 23(a)(4)). "To determine whether [the] named plaintiffs will adequately represent a class, courts must resolve two questions: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" Id. (internal quotation marks omitted). "Adequate representation depends on, among other factors, an absence of antagonism between representatives and absentees, and a sharing of interest between representatives and absentees." Id.

Here, the proposed class representative has no individual claims separate from the class claims, (see, generally, Dkt. 46, FAC), and does not appear to have any conflicts of interest with the absent class members. (See Dkt. 42, Memo. at 16); see, e.g., Barbosa v. Cargill Meat Sols.

Corp, 297 F.R.D. 431, 442 (E.D. Cal. 2013) ("[T]here is no apparent conflict of interest between the named Plaintiffs' claims and those of the other Class Members' – particularly because the named Plaintiffs have no separate and individual claims apart from the Class."). Thus, "[t]he adequacy-of-representation requirement is met here because Plaintiff[] ha[s] the same interests as the absent Class Members[.]" See Barbosa, 297 F.R.D. at 442.

Finally, as noted earlier, adequacy "also factors in competency and conflicts of class counsel." Amchem, 521 U.S. at 626 n. 20, 117 S.Ct. at 2251. Here, the Settlement Agreement provides for the court to appoint Moon Law Group, PC as class counsel. (See Dkt. 43-1, Settlement Agreement at ¶ 3) (identifying class counsel). Having reviewed the declaration filed by proposed class counsel, (see Dkt. 42-1, Moon Decl. at ¶¶ 41-59), the court is persuaded that there are no issues as to the adequacy of representation. See Barbosa, 297 F.R.D. at 443 ("There is no challenge to the competency of the Class Counsel, and the Court finds that Plaintiffs are represented by experienced and competent counsel who have litigated numerous class action cases.").

B. Rule 23(b) Requirements.

Certification under Rule 23(b)(3) is proper "whenever the actual interests of the parties can be served best by settling their differences in a single action." Hanlon, 150 F.3d at 1022 (internal quotation marks omitted). The rule requires two different inquiries, specifically a determination as to whether: (1) "questions of law or fact common to class members predominate over any questions affecting only individual members[;]" and (2) "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3); see Spann, 314 F.R.D. at 321-22.

1. **Predominance**.

"[T]he general rule [is] that predominance is easier to satisfy in the settlement context." Jabbari v. Farmer, 965 F.3d 1001, 1006 (9th Cir. 2020). "To determine whether a class satisfies the [predominance] requirement, a court pragmatically compares the quality and import of common questions to that of individual questions." Id. at 1005. "[T]he predominance analysis under Rule 23(b)(3) focuses on the relationship between the common and individual issues in the

case, and tests whether the proposed class is sufficiently cohesive to warrant adjudication by representation." Abdullah, 731 F.3d at 964 (internal quotation marks omitted); see also Amchem, 521 U.S. at 623, 117 S.Ct. at 2249 ("The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation."). "If a common question will drive the resolution [of the litigation], even if there are important questions affecting only individual members, then the class is sufficiently cohesive to warrant adjudication by representation." Jabbari, 965 F.3d at 1005 (internal quotation marks omitted); see Abdullah, 731 F.3d at 964 ("Rule 23(b)(3) requires [only] a showing that questions common to the class predominate, not that those questions will be answered, on the merits, in favor of the class.") (internal quotation marks omitted) (brackets in original). Finally, the class damages must be sufficiently traceable to plaintiff's liability case. See Comcast Corp. v. Behrend, 569 U.S. 27, 35, 133 S.Ct. 1426, 1433 (2013).

For the reasons discussed above, see supra at § I.A.2., the court is persuaded that common questions predominate over individual questions. Here, there is an overriding question that predominates over all others in this litigation. See Tyson Foods, Inc. v. Bouaphakeo, 577 U.S. 442, 453-54, 136 S.Ct. 1036, 1045 (2016) ("When one or more of the central issues in the action are common to the class and can be said to predominate, the action may be considered proper under Rule 23(b)(3) even though other important matters will have to be tried separately, such as damages or some affirmative defenses peculiar to some individual class members.") (internal quotation marks omitted). For example, the predominant question is whether defendant's classification of plaintiff and class members as exempt employees was improper. (See Dkt. 42, Memo. at 17). The determination of that question would establish defendant's liability on a class-wide basis. In other words, the answer to this question would drive the resolution of the litigation, "despite the existence of minor factual differences between the potential class members, as the common issues predominate over varying factual predicates, such as number of hours worked under the allegedly unlawful workplace policies." Clesceri v. Beach City Investigations & Protective Servs., Inc., 2011 WL 320998, *5 (C.D. Cal. 2011) (internal quotation marks omitted). Finally, the relief sought applies to all class members and is traceable to plaintiff's liability case.

See Comcast, 569 U.S. at 35, 133 S.Ct. at 1433. In short, the court is persuaded that "[a] common nucleus of facts and potential legal remedies dominates this litigation." Hanlon, 150 F.3d at 1022.

2. **Superiority**.

"The superiority inquiry under Rule 23(b)(3) requires determination of whether the objectives of the particular class action procedure will be achieved in the particular case" and "necessarily involves a comparative evaluation of alternative mechanisms of dispute resolution." Hanlon, 150 F.3d at 1023 (internal citation omitted). Rule 23(b)(3) provides a list of four non-exhaustive factors relevant to superiority. See Fed. R. Civ. P. 23(b)(3)(A)-(D).

The first factor considers "the class members' interests in individually controlling the prosecution or defense of separate actions." Fed. R. Civ. P. 23(b)(3)(A). "This factor weighs against class certification where each class member has suffered sizeable damages or has an emotional stake in the litigation." Barbosa, 297 F.R.D. at 444. Here, Hogue does not assert any claims for emotional distress, nor is there any indication that the amount of damages any individual class member could recover is significant or substantially greater than the potential recovery of any other class member. (See, generally, Dkt. 46, FAC). The alternative method of resolution – pursuing individual claims for a relatively modest amount of damages – would likely never be brought, as "litigation costs would dwarf potential recovery." Hanlon, 150 F.3d at 1023; see Leyva v. Medline Indus., Inc., 716 F.3d 510, 515 (9th Cir. 2013) ("In light of the small size of the putative class members' potential individual monetary recovery, class certification may be the only feasible means for them to adjudicate their claims. Thus, class certification is also the superior method of adjudication."); Bruno v. Quten Research Inst., LLC, 280 F.R.D. 524, 537 (C.D. Cal. 2011) ("Given the small size of each class member's claim, class treatment is not merely the superior, but the only manner in which to ensure fair and efficient adjudication of the present action."). In short, "there is no evidence that Class members have any interest in controlling prosecution of their claims separately nor would they likely have the resources to do so." Munoz v. PHH Corp., 2013 WL 2146925, *26 (E.D. Cal. 2013).

The second factor is "the extent and nature of any litigation concerning the controversy already begun by or against class members[.]" Fed. R. Civ. P. 23(b)(3)(B). While any class member who wishes to control his or her own case may opt out of the class, see Fed. R. Civ. P. 23(c)(2)(B)(v), "other pending litigation is evidence that individuals have an interest in controlling their own litigation." 4 Newberg on Class Actions § 4:70 (6th ed. 2023) (emphasis omitted). Here, there is no indication that any class member is involved in any other litigation concerning the claims in this case. (See, generally, Dkt. 42, Memo. at 17-18); see Barbosa, 297 F.R.D. at 444 ("The Court does not have any information that litigation concerning this controversy is currently being pursued by or against the class members; thus, this factor is neutral.").

The third factor is "the desirability or undesirability of concentrating the litigation of the claims in the particular forum[,]" and the fourth factor is "the likely difficulties in managing a class action." Fed. R. Civ. P. 23(b)(3)(C)-(D). As noted above, "[i]n the context of settlement . . . the third and fourth factors are rendered moot and are irrelevant." Barbosa, 297 F.R.D. at 444; see also Amchem, 521 U.S. at 620, 117 S.Ct. at 2248 ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, . . . for the proposal is that there be no trial.") (citation omitted); In re Hyundai, 926 F.3d at 556-57 ("The criteria for class certification are applied differently in litigation classes and settlement classes. In deciding whether to certify a litigation class, a district court must be concerned with manageability at trial. However, such manageability is not a concern in certifying a settlement class where, by definition, there will be no trial.").

The only factors in play here weigh in favor of class treatment. Further, the filing of separate suits by more than 100 class members "would create an unnecessary burden on judicial resources." Barbosa, 297 F.R.D. at 445. Under the circumstances, the court finds that the superiority requirement is satisfied.

/ / /

/ / /

II. FAIRNESS, REASONABLENESS, AND ADEQUACY OF THE PROPOSED SETTLEMENT.

A. The Settlement is the Product of Arm's-Length Negotiations.

Pursuant to Rule 23(e)(2)(B), the court must evaluate whether the settlement was negotiated at arm's length. Here, class counsel represents that the settlement negotiations were supervised by a mediator, and were conducted "at arm's length and, although conducted in a professional manner, were adversarial." (See Dkt. 42-1, Moon Decl. at ¶ 12). Counsel adds that the parties engaged in informal and "protracted formal discovery[]" that yielded sufficient data for plaintiff's counsel and expert to "assess the strengths and weaknesses of the claims and to perform a thorough damages analysis." (Id. at ¶ 10).

Based on the evidence and record before the court, the court is persuaded that the parties thoroughly investigated and considered their own and the opposing party's positions. The parties had a sound basis for measuring the terms of the settlement against the risks of continued litigation, and there is no evidence that the settlement is the product of fraud or overreaching by, or collusion between, the negotiating parties. See, e.g., Spann, 314 F.R.D. at 323-25 (finding no evidence that a class action settlement was the product of fraud or collusion between the parties); Rodriguez v. W. Publ'g Corp., 563 F.3d 948, 965 (9th Cir. 2009) (affirming final approval of class action settlement where there was "no evidence of fraud, overreaching, or collusion").

B. The Amount Offered in Settlement Falls Within a Range of Possible Judicial Approval and is a Fair and Reasonable Outcome for Class Members.

1. **Recovery for Class Members.**

As noted above, class members will share in a non-reversionary gross settlement amount of $682,000. (See Dkt. 43-1, Settlement Agreement at ¶¶ 23, 29). If the anticipated attorney's fees, costs, LWDA payment, incentive award, and settlement costs are granted, the net settlement amount will be $361,166.67, (see Dkt. 42-1, Moon Decl. at ¶ 30), which would result in an average individual net benefit of $3,278.27. (Id.); (Dkt. 42, Memo. at 23). Plaintiff's counsel notes that given class members' average hourly rate of $50, "the average net benefit is approximately 65.57 hours of work." (Dkt. 41-2, Moon Decl. at ¶ 30). According to plaintiff's counsel, the gross

settlement amount "represents 87% of the realistic maximum recovery." (See Dkt. 42, Memo. at 22); (Dkt. 42-1, Moon Decl. at ¶¶ 22-31).

Under the circumstances, the court is persuaded that the settlement is fair, reasonable, and adequate, particularly when viewed in light of the litigation risks and the costs, and delay of trial and appeal. See Fed. R. Civ. P. 23(e)(1)(B)(i) & (e)(2)(C)(i); 2018 Adv. Comm. Notes to Rule 23(e)(1) (The types of information that should be provided to the court deciding whether to grant preliminary approval includes, among other things: (1) "the extent and type of benefits that the settlement will confer on the members of the class"; and (2) "information about the likely range of litigated outcomes, and about the risks that might attend full litigation"). Here, given the significant risks of litigation coupled with the delays associated with continued litigation, the court is persuaded that the settlement benefits to the class fall within the range of reasonableness.[6] See, e.g., In re Uber FCRA Litig., 2017 WL 2806698, *7 (N.D. Cal. 2017) (granting preliminary approval of settlement that was worth "7.5% or less" of the expected value); see also Linney v. Cellular Alaska P'ship, 151 F.3d 1234, 1242 (9th Cir. 1998) ("The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.") (internal quotation marks omitted).[7]

/ / /

/ / /

---

[6] Although the LWDA received notice of the settlement, (see Dkt. 43, Supplemental Declaration of Kane Moon [] at ¶ 6); (Dkt. 43-4) (LWDA confirmation email), it did not object or respond, (see, generally, Dkt.), which the court construes as consent to the proposed settlement. See Echavez v. Abercrombie & Fitch Co., Inc., 2017 WL 3669607, *3 (C.D. Cal. 2017) ("[T]he Court finds persuasive that LWDA was invited to file a response to the proposed settlement agreement in this case and elected not to file any objections or opposition thereto. The Court infers LWDA's non-response is tantamount to its consent to the proposed settlement terms, namely the proposed PAGA penalty amount.").

[7] Although plaintiff's counsel repeatedly refers to the presumption of fairness, (see Dkt. 42, Memo. at 18-19), the court did not rely on any such presumption in preliminarily approving the settlement. See In re Apple Inc. Device Performance Litig., 50 F.4th 769, 783 (9th Cir. 2022) (vacating final approval order where "the district court abused its discretion by stating that it applied a presumption of reasonableness and fairness to the settlement").

2. **Release of Claims**.

The court must also consider whether the settlement contains an overly broad release of liability. See 4 Newberg on Class Actions § 13:15 (6th ed. 2023) ("Beyond the value of the settlement, courts have rejected preliminary approval when the proposed settlement contain[s] obvious substantive defects such as . . . overly broad releases of liability."); see, e.g., Fraser v. Asus Comput. Int'l, 2012 WL 6680142, *3 (N.D. Cal. 2012) (denying preliminary approval of proposed settlement that provided defendant a "nationwide blanket release" in exchange for payment "only on a claims-made basis[,]" without the establishment of a settlement fund or any other benefit to the class).

Here, class members who do not exclude themselves from the settlement will release

> all claims, rights, demands, liabilities and causes of action arising from the alleged: (1) Failure to Pay Minimum Wages (Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197); (2) Failure to Pay Overtime Compensation (Cal. Lab. Code §§ 1194 and 1198); (3) Failure to Provide Meal Periods (Cal. Lab. Code §§ 226.7, 512); (4) Failure to Authorize and Permit Rest Breaks (Cal Lab. Code § 226.7); (5) Failure to Indemnify Necessary Business Expenses (Cal. Lab. Code § 2802); (6) Failure to Timely Pay Final Wages at Termination (Cal. Lab. Code §§ 201-203); (7) Failure to Provide Accurate Itemized Wage Statements (Cal. Lab. Code § 226); and (8) Unfair Business Practices (Cal. Bus. & Prof. Code §§ 17200, et seq.) and all others claims, rights, demands, liabilities and causes of action that were asserted or that could have been asserted based on the facts or claims alleged in the operative complaint in the Action, and any amendments thereto.

(Dkt. 43-1, Settlement Agreement at ¶ 42).[8]

---

[8] The Settlement Agreement also provides for a separate PAGA release, which releases "all claims, rights, demands, liabilities and causes of action arising from the PAGA (Labor Code §§ 2689, et seq.) that were asserted or that could have been asserted based on the facts or claims alleged in the operative complaint in the Action and Plaintiff's PAGA Notice, and any amendments thereto." (Dkt. 43-1, Settlement Agreement at ¶ 43).

With the understanding that, under the Release, settlement class members are not giving up any claims unrelated to those asserted in this action, the court finds that the Release adequately balances fairness to absent class members and recovery for the class with defendant's business interest in ending this litigation with finality.[9] See Fraser, 2012 WL 6680142, at *4 (recognizing defendant's "legitimate business interest in 'buying peace' and moving on to its next challenge" as well as the need to prioritize "[f]airness to absent class member[s]").

C. The Settlement Agreement Does Not Improperly Grant Preferential Treatment to the Class Representative.

Pursuant to Rule 23(e)(2)(D), the court must evaluate whether the settlement "treats class members equitably relative to each other." The Ninth Circuit has "repeatedly held that reasonable incentive awards to class representatives are permitted," In Re Apple Inc. Device Performance Litig., 50 F.4th at 785 (internal quotation marks omitted), and has instructed "district courts to scrutinize carefully the awards so that they do not undermine the adequacy of the class representatives." Radcliffe v. Experian Info. Sols. Inc., 715 F.3d 1157, 1163 (9th Cir. 2013). The court must examine whether there is a "significant disparity between the incentive awards and the payments to the rest of the class members" such that it creates a conflict of interest. See id. at 1165 (court cast doubt, but did not rule on, "whether class representatives could be expected to fairly evaluate whether awards ranging from $26 to $750 is a fair settlement value when they would receive $5,000 incentive awards"). "In deciding whether [an incentive] award is warranted, relevant factors include the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation." Cook v. Niedert, 142 F.3d 1004, 1016 (7th Cir. 1998).

[9] The Settlement Agreement states that the parties "understand and agree that this Settlement Agreement, in conjunction with the Preliminary Approval Order, prohibits and enjoins any Participating Class Member (including Plaintiff) from bringing against the Verizon Releasees any of the Related Class Claims or Released PAGA Claims through and including the Final Approval Date." (Dkt. 43-1, Settlement Agreement at ¶ 94); (see also id. at ¶ 104(g)). However, the court ordinarily does not grant or impose such injunctive relief.

Here, the Settlement Agreement provides for a service payment of up to $7,500 for plaintiff. (Dkt. 43-1, Settlement Agreement at ¶ 11). Although plaintiff appears to have been diligent and taken on substantial responsibility in litigating the case, the court believes that a $7,500 service payment would be excessive under the circumstances here, and therefore, tentatively finds that an incentive payment of no more than $5,000 is appropriate. See Radcliffe, 715 F.3d at 1165.

D. Class Notice and Notification Procedures.

Upon settlement of a certified class, "[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal[.]" Fed. R. Civ. P. 23(e)(1)(B). Rule 23(c)(2) requires the "best notice that is practicable under the circumstances, including individual notice" of particular information. See Fed. R. Civ. P. 23(c)(2)(B) (enumerating notice requirements for classes certified under Rule 23(b)(3)).

"The standard for the adequacy of a settlement notice in a class action under either the Due Process Clause or the Federal Rules is measured by reasonableness." Wal-Mart Stores, Inc. v. Visa U.S.A., Inc., 396 F.3d 96, 113 (2d Cir. 2005); Low v. Trump Univ., LLC, 881 F.3d 1111, 1117 (9th Cir. 2018) ("The yardstick against which we measure the sufficiency of notices in class action proceedings is one of reasonableness.") (internal quotation marks omitted). A class action settlement 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., L.L.C. v. Gen. Elec., 361 F.3d 566, 575 (9th Cir. 2004) (internal quotation marks omitted); see also Gooch v. Life Inv'rs. Ins. Co. of Am., 672 F.3d 402, 423 (6th Cir. 2012) (Settlement notices "are sufficient if they inform the class members of the nature of the pending action, the general terms of the settlement, that complete and detailed information is available from the court files, [and] that any class member may appear and be heard at the hearing[.]") (internal quotation marks omitted). The notice should provide sufficient information to allow class members to decide whether they should accept the benefits of the settlement, opt out and pursue their own remedies, or object to the terms of the settlement but remain in the class. See In re Integra Realty Res., Inc., 262 F.3d 1089, 1111 (10th Cir. 2001) ("The standard for the settlement

notice under Rule 23(e) is that it must 'fairly apprise' the class members of the terms of the proposed settlement and of their options.") (internal quotation marks omitted).

Here, class members will receive direct notice via first-class Mail, (see Dkt. 43-1, Settlement Agreement at ¶¶ 8, 77); (Dkt. 42, Memo. at 11-12), which will consist of the Notice of Class Action Settlement ("Notice"). (Dkt. 43-1, Settlement Agreement at ¶ 8); (Dkt. 43-2, Notice). The Notice describes the nature of the action and the claims alleged in the operative complaint. (See Dkt. 43-2, Notice at 1-2); see also Fed. R. Civ. P. 23(c)(2)(B)(i) & (iii). It provides the definition of the class, (see Dkt. 43-2, Notice at 1); see also Fed. R. Civ. P. 23(c)(2)(B)(ii), and explains the terms of the settlement, including the settlement amount, the distribution of that amount, and the release, as well as the proposed attorney's fees and expenses, and incentive payment. (See Dkt. 43-2, Notice at 3-5). The Notice includes an explanation that lays out the class members' options under the settlement: they may remain in the class, object to the settlement but still remain in the class, or exclude themselves from the settlement and pursue their claims separately against defendant. (See id. at 1-2, 7-8); see also Fed. R. Civ. P. 23(c)(2)(B)(v) & (vi). Finally, the Notice explains the procedures for objecting to the settlement and provides information about the Final Fairness Hearing. (See Dkt. 43-2, Notice at 8-9).

Based on the foregoing, the court finds there is no alternative method of distribution that would be more practicable here, or any more reasonably likely to notify the class members. In addition, the court finds that the procedure for providing notice and the content of the class notice constitute the best practicable notice to class members and comply with the requirements of due process.

E. Summary.

The court's preliminary evaluation of the settlement does not disclose grounds to doubt its fairness "such as unduly preferential treatment of class representatives or segments of the class, inadequate compensation or harms to the classes, . . . or excessive compensation for attorneys." Manual for Complex Litig. § 21.632 at 321 (4th ed. 2004); see also Spann, 314 F.R.D. at 323 (same).

CONCLUSION

Based on the foregoing, IT IS ORDERED THAT:

1. Plaintiff's Motion for Preliminary Approval of Class and PAGA Action Settlement **(Document No. 42)** is **granted** upon the terms and conditions set forth in this Order.

2. The court preliminarily certifies the class, as defined in ¶ 2 of the Settlement Agreement (Dkt. 43-1), for the purposes of settlement.

3. The court preliminarily appoints plaintiff Jeffrey Hogue as class representative for settlement purposes.

4. The court preliminarily appoints Moon Law Group, PC as class counsel for settlement purposes.

5. The court preliminarily finds that the terms of the settlement are fair, reasonable and adequate, and comply with Rule 23(e) of the Federal Rules of Civil Procedure.

6. The court approves the form, substance, and requirements of the Notice. (See Dkt. 43-2). The proposed manner of notice of the settlement set forth in the Settlement Agreement constitutes the best notice practicable under the circumstances and complies with the requirements of due process.

7. The court appoints ILYM as settlement administrator. ILYM shall complete dissemination of class notice, in accordance with the proposed notice plan, no later than **February 19, 2024**.

8. Plaintiff shall file a motion for attorney's fees and costs, as well as any incentive payment, no later than **March 7, 2024,** and notice it for hearing for the date of the final approval hearing set forth below.

9. Any class member who wishes to either (a) object to the settlement, including the requested attorney's fees, costs and incentive award, or (b) exclude him or herself from the settlement, must file his or her objection to the settlement or request exclusion no later than **April 8, 2024**, in accordance with the Notice and this Order.

10. Plaintiff shall, no later than **April 18, 2024**, file and serve a motion for final approval of the settlement and a response to any objections to the settlement. The motion shall be noticed for hearing for the date of the final approval hearing set forth below.

11. Defendant may file and serve a memorandum in support of final approval of the Settlement Agreement and/or in response to objections no later than **April 25, 2024.**

12. Any class member who wishes to appear at the final approval (fairness) hearing, either on his or her own behalf or through an attorney, to object to the settlement, including the requested attorney's fees, costs or incentive awards, shall, no later than **May 2, 2024**, file with the court a Notice of Intent to Appear at Fairness Hearing.

13. A final approval (fairness) hearing is hereby set for **May 16, 2024**, at **10:00 a.m.** in Courtroom 6D of the First Street Courthouse, to consider the fairness, reasonableness, and adequacy of the Settlement Agreement as well as the award of attorney's fees and costs to class counsel, and incentive award to the named plaintiff.

14. All proceedings in the Action, other than proceedings necessary to carry out or enforce the Settlement Agreement or this Order, are stayed pending the final fairness hearing and the court's decision whether to grant final approval of the settlement.

Dated this 3rd day of January, 2024.

/s/
Fernando M. Olguin
United States District Judge