

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RICKY MANIER,
Plaintiff,

v.

SIMS METAL MANAGEMENT-
NORTHWEST, et al.,
Defendants.

Case No. 19-cv-00718-JST

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

Re: ECF No. 46

Before the Court is Plaintiff’s renewed motion for preliminary approval of class action settlement and preliminary certification of settlement class. ECF No. 46. For the reasons set forth below, the Court will grant the motion.

I. BACKGROUND

A. Factual and Procedural Background

The factual and procedural background to this putative class action is more fully described in the Court’s previous order denying Plaintiff’s motion for preliminary settlement approval and preliminary class certification. *See* ECF No. 45. In short, this putative class action arises out of an alleged failure to pay overtime wages and provide accurate wage statements. Plaintiff Ricky Manier, Jr. alleges that “whenever non-discretionary incentives were paid to . . . employees, such amounts were not included/factored into the regular rate of pay for purposes of overtime wages,” resulting in a failure to pay correct wages. First Amended Complaint (“FAC”) ECF No. 19 ¶¶ 29-30. Plaintiff also alleges that “whenever ‘Shift Pay’ wages were paid to . . . employees, the pay stubs only showed a flat amount without any applicable rate and hours to show how the ‘Shift Pay’ amount was calculated,” and that while paystubs identified the employer as “a company named Sims Metal Management – Northwest, this company does not appear on the California

1 Secretary of State Website.” *Id.* ¶ 33.

2 On April 26, 2019, Plaintiff filed the operative FAC. The FAC asserts four claims: (1)
3 failure to pay correct wages, Cal. Lab. Code §§ 510, 558, 1194; (2) failure to provide accurate
4 itemized wage statements, Cal. Lab. Code § 226; (3) unfair competition, Cal. Bus. & Prof. Code §
5 17200, *et seq.*; and (4) civil penalties under the Private Attorneys General Act (“PAGA”), Cal.
6 Lab. Code § 2698, *et seq.* *Id.* ¶¶ 28-44. “On March 3, 2020, the [p]arties engaged in a full day
7 mediation” with Mark S. Rudy, a professional mediator. ECF No. 42 at 10. Though the parties
8 did not reach an agreement during that session, they continued negotiations with Mr. Rudy’s
9 involvement and eventually reached the proposed settlement. *Id.*

10 On June 26, 2020, Plaintiff filed an unopposed motion for preliminary approval of class
11 action settlement. *Id.* at 1. On November 12, 2020, the Court denied approval without prejudice
12 and deferred ruling on preliminary class certification. ECF No. 45. Plaintiff filed the instant
13 unopposed renewed motion for preliminary approval on February 18, 2021. ECF No. 46.

14 **B. Terms of Settlement**

15 The terms of the proposed settlement agreement are described in detail in the Court’s order
16 denying Plaintiff’s first motion for preliminary approval. *See id.* The Court incorporates its
17 discussion of the parties’ original settlement agreement here. In response to the Court’s order
18 denying preliminary approval, the parties amended the settlement agreement through an
19 addendum. *See* ECF No. 46-1 at 3-6. The changes to the settlement agreement in the addendum
20 address the deficiencies identified by the Court in its prior order and are discussed in detail below.
21 The original agreement and the addendum are collectively referred to as the “Settlement.”

22 **II. JURISDICTION**

23 This Court has jurisdiction pursuant to 28 U.S.C. § 1331.

24 **III. MOTION FOR PRELIMINARY SETTLEMENT APPROVAL**

25 **A. Legal Standard**

26 The Ninth Circuit maintains a “strong judicial policy that favors” the settlement of class
27 actions. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). Rule 23 requires
28 courts to employ a two-step process in evaluating a class action settlement. First, the parties must

1 show “that the court will likely be able to . . . approve the proposal under Rule 23(e)(2).” Fed. R.
2 Civ. P. 23(e)(1)(B). Second, courts must hold a hearing pursuant to Rule 23(e)(2) to make a final
3 determination of whether the settlement is “fair, reasonable, and adequate.”

4 The Court’s task at the preliminary approval stage is to determine whether the settlement
5 falls “within the range of possible approval.” *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d
6 1078, 1080 (N.D. Cal. 2007) (citation omitted). “The initial decision to approve or reject a
7 settlement proposal is committed to the sound discretion of the trial judge.” *City of Seattle*, 955
8 F.2d at 1276 (citation omitted). Courts “must be particularly vigilant not only for explicit
9 collusion, but also for more subtle signs that class counsel have allowed pursuit of their own self-
10 interests and that of certain class members to infect the negotiations.” *In re Bluetooth Headset*
11 *Prods. Liab. Litig.*, 654 F.3d 935, 947 (9th Cir. 2011). If the court makes these preliminary
12 findings, it “must direct notice in a reasonable manner to all class members who would be bound
13 by the proposal.” Fed. R. Civ. P. 23(e)(1)(B).

14 Within this framework, preliminary approval of a settlement is appropriate if “the proposed
15 settlement appears to be the product of serious, informed, non-collusive negotiations, has no
16 obvious deficiencies, does not improperly grant preferential treatment to class representatives or
17 segments of the class, and falls within the range of possible approval.” *In re Tableware*, 484 F.
18 Supp. 2d at 1079 (citation omitted). The proposed settlement need not be ideal, but it must be fair
19 and free of collusion, consistent with counsel’s fiduciary obligations to the class. *Hanlon v.*
20 *Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998), overruled on other grounds by *Wal-Mart*
21 *Stores, Inc. v. Dukes*, 564 U.S. 338 (2011) (“Settlement is the offspring of compromise; the
22 question we address is not whether the final product could be prettier, smarter or snazzier, but
23 whether it is fair, adequate and free from collusion.”). To assess a settlement proposal, courts
24 must balance a number of factors:

25 [T]he strength of the plaintiffs’ case; the risk, expense, complexity,
26 and likely duration of further litigation; the risk of maintaining class
27 action status throughout the trial; the amount offered in settlement;
28 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.

1 *Id.* at 1026 (citations omitted).¹ The proposed settlement must be “taken as a whole, rather than
2 the individual component parts,” in the examination for overall fairness. *Id.* Courts do not have
3 the ability to “delete, modify, or substitute certain provisions”; the settlement “must stand or fall in
4 its entirety.” *Id.* (citation omitted).

5 **B. Discussion**

6 The Court denied Plaintiff’s first motion for preliminary approval after identifying “a
7 number of deficiencies,” ECF No. 45 at 8, including: (1) Plaintiff had not adequately justified the
8 amendment of the Wage Statement Class to exclude members of the Shift Differential Overtime
9 Class²; (2) Plaintiff had not provided sufficient information regarding the value of the class’s
10 claims or the reasonableness of the class’s recovery; (3) Plaintiff had not justified the PAGA
11 settlement or provided enough information for the Court to determine the adequacy of the PAGA
12 recovery; (4) the notice plan’s response period was too short; (5) the notice (a) required Class
13 Members to submit extraneous information to opt out of the Settlement, (b) did not advise Class
14 Members what information was required to object to the Settlement, (c) did not explain how to
15 access the case docket via PACER or in person, (d) did not make clear that the court can only
16 approve or deny the settlement and cannot change the terms of the settlement, and (e) did not
17 provide for an extension of the response deadline if notice had to be resent; (6) Plaintiff did not
18 explain why the *cy pres* to Legal Services for Children was relevant to the Proposed Class; (7)
19 there was not enough information about the parties’ compliance with CAFA; and (8) Plaintiff did
20 not specify when the motion for attorney’s fees will be filed, and the Notice Plan did not indicate
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23 ¹ These factors are substantially similar to those articulated in the 2018 amendments to Rule 23(e),
24 which were not intended to “displace any factor [developed under existing Circuit precedent], but
25 rather to focus the court and the lawyers on the core concerns of procedure and substance that
26 should guide the decision whether to approve the proposal.” *Hefler v. Wells Fargo & Co.*, No. 16-
27 cv-05479-JST, 2018 WL 6619983, at *4 (N.D. Cal. Dec. 18, 2018) (quoting Fed. R. Civ. P.
28 23(e)(2) advisory committee’s note to 2018 amendment).

26 ² The Settlement Class contains two subclasses: (1) the “Shift Differential Overtime Class,”
27 defined as “[a]ll of [Sims’s] past and present non-exempt California employees who were paid
28 shift pay and overtime in the same workweek at any time during the Class Period”; and (2) the
“Wage Statement Class,” defined as “[a]ll of [Sims’s] past and present California exempt and non-
exempt employees who . . . were paid wages by [Sims] from January 3, 2018, through the date the
Court grants Preliminary Approval.” ECF No. 42-7 §§ 1.3(a)-(b); ECF 46-1 at 3.

1 whether Class Members will have the opportunity to object to attorney’s fees. *See* ECF No. 45.

2 The addendum, revised notice, and Plaintiff’s renewed motion address each of these
3 deficiencies. First, the Wage Statement Class no longer excludes members of the Shift
4 Differential Overtime Class. *See* ECF No. 46-1 at 3; ECF No. 46 (“To the extent any individual is
5 part of both settlement classes, he/she will be entitled to his/her individual settlement amounts for
6 both classes.”).

7 Second, Plaintiff has provided much more information regarding the possible range of
8 recovery and PAGA penalties. Plaintiff explains how he calculated the maximum recovery for the
9 Shift Differential Overtime Class, the Wage Statement Class, and the PAGA penalties. ECF No.
10 46 at 23-25. Plaintiff has also elaborated on the risks of proceeding with trial and the strength of
11 Sims’s positions. *Id.* at 26-28. The Court now finds that the settlement falls within the range of
12 possible approval.

13 Third, the Court concludes that the revised proposed notice, ECF No. 46-1 at 17-23, and
14 distribution plan is “the best notice practicable under the circumstances.” Fed. R. Civ. P.
15 23(c)(2)(B). Plaintiff has changed the response period to be 60 days, *id.* at 3-4, removed the
16 requirement that Class Members submit extraneous information to opt out of the Settlement, *id.* at
17 4, advises Class Members what information is required to object to the Settlement, *id.* at 19-20,
18 explains how to access the case docket via PACER or in person, *id.* at 23, makes clear that the
19 court can only approve or deny the settlement and cannot change the terms of the settlement, *id.* at
20 19, and provides for an extension of the response deadline if notice has to be re-mailed, *id.* at 3. In
21 addition, the parties have now agreed – and the proposed notice reflects – that Plaintiff’s counsel
22 shall file with a motion for an award of attorneys’ fees, costs, and an enhancement award by no
23 later than 30 days after the first mailing date, giving class members 30 days to object to the
24 motion. *Id.* at 4-5, 19.

25 Fourth, the Settlement now provides that “[a]ny funds remaining uncashed after 180 days
26 shall be sent to the California State Controller’s Office in the name of the Class Member to whom
27 the uncashed settlement payment check was addressed,” rather than to Legal Services for
28 Children. *Id.* at 4. This “qualif[ies] as ‘the next best distribution’ to giving the funds directly to

1 class members.” *Dennis v. Kellogg Co.*, 697 F.3d 858, 865 (9th Cir. 2012) (quoting *Six (6)*
 2 *Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1308 (9th Cir. 1990)).

3 Finally, the parties have substantially complied with the CAFA notice requirements. *See*
 4 28 U.S.C. § 1715. Plaintiff explains that Defendant provided CAFA notice of the original
 5 settlement, *see* ECF No. 43, and that “Defendant will provide notice to the Attorney General of the
 6 United States of America and the appropriate state official in each state in which a class member
 7 resides of [the] updated Settlement Agreement.” ECF No. 46 at 33. Defendant first provided
 8 CAFA notice on July 6, 2020, 10 days after the first motion for preliminary approval was filed.
 9 *See* ECF Nos. 43, 42. This complied with Section 1715(b)’s requirement that CAFA notice be
 10 provided “[n]ot later than 10 days after a proposed settlement of class action is filed in court.”
 11 The Court instructs Sims to promptly file an updated proof of CAFA notice regarding the updated
 12 Settlement.

13 These amendments resolve the Court’s prior concerns.³ The Court therefore preliminarily
 14 finds that the settlement of this action, on the terms and conditions set forth in the Settlement, is
 15 fundamentally fair, reasonable, adequate, and in the best interest of the settlement class members.

16 **IV. MOTION FOR PRELIMINARY CLASS CERTIFICATION**

17 **A. Legal Standard**

18 Class certification under Federal Rule of Civil Procedure 23 is a two-step process. First, a
 19 plaintiff must demonstrate that the four requirements of Rule 23(a) are met: numerosity,
 20 commonality, typicality, and adequacy. “Class certification is proper only if the trial court has
 21 concluded, after a ‘rigorous analysis,’ that Rule 23(a) has been satisfied.” *Wang v. Chinese Daily*
 22 *News, Inc.*, 737 F.3d 538, 542-43 (9th Cir. 2013) (quoting *Dukes*, 564 U.S. at 351). “When
 23 appropriate, a class may be divided into subclasses that are each treated as a class under this rule.”
 24 Fed. R. Civ. P. 23(c)(5).

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 27 ³ The Court notes that Plaintiff’s counsel continues to request up to 30 percent of the settlement
 28 amount in attorney’s fees and a \$10,000 incentive award for Manier. ECF No. 46 at 31-32. The
 Court need not resolve the specific amount of attorney’s fees or incentive award now, but
 encourages Plaintiff to review its prior order discussing the Ninth Circuit benchmarks for these
 awards and other applicable case law. ECF No. 45 at 18-20.

1 Rule 23(a)(1) requires that the class be “so numerous that joinder of all members is
2 impracticable.” Fed. R. Civ. P. 23(a)(1). A class or subclass with more than 40 members “raises a
3 presumption of impracticability based on numbers alone.” *Hernandez v. County of Monterey*, 305
4 F.R.D. 132, 153 (N.D. Cal. 2015) (quotation marks and citation omitted).

5 Rule 23(a)(2) requires that there be “questions of law or fact common to the class.” Fed.
6 R. Civ. P. 23(a)(2). A common question is one “capable of classwide resolution – which means
7 that determination of its truth or falsity will resolve an issue that is central to the validity of each
8 one of the claims in one stroke.” *Dukes*, 564 U.S. at 350. For the purposes of Rule 23(a)(2),
9 “even a single common question” is sufficient. *Id.* at 359 (quotation marks and alterations
10 omitted).

11 In certifying a class, courts must find that “the claims or defenses of the representative
12 parties are typical of the claims or defenses of the class.” Fed R. Civ. P. 23(a)(3). “The purpose
13 of the typicality requirement is to assure that the interest of the named representative aligns with
14 the interests of the class.” *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). “The
15 test of typicality ‘is whether other members have the same or similar injury, whether the action is
16 based on conduct which is not unique to the named plaintiffs, and whether other class members
17 have been injured by the same course of conduct.’” *Id.* (quoting *Schwartz v. Harp*, 108 F.R.D.
18 279, 282 (C.D. Cal. 1985)).

19 Finally, “the adequacy of representation requirement [under Rule 23(a)] . . . requires that
20 two questions be addressed: (a) do the named plaintiffs and their counsel have any conflicts of
21 interest with other class members and (b) will the named plaintiffs and their counsel prosecute the
22 action vigorously on behalf of the class?” *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 462
23 (9th Cir. 2000).

24 A plaintiff must also establish that the action meets one of the bases for certification laid
25 out by Rule 23(b). Rule 23(b)(3) permits certification if “the court finds that the questions of law
26 or fact common to class members predominate over any questions affecting only individual
27 members, and that a class action is superior to other available methods for fairly and efficiently
28 adjudicating the controversy.”

1 When determining whether to certify a class for settlement purposes, a court must pay
 2 “heightened” attention to the requirements of Rule 23. *Amchem*, 521 U.S. at 620. “Such attention
 3 is of vital importance, for a court asked to certify a settlement class will lack the opportunity,
 4 present when a case is litigated, to adjust the class, informed by the proceedings as they unfold.”
 5 *Id.*

6 **B. Discussion**

7 The Court preliminarily finds, for settlement purposes only, that both the Shift Differential
 8 Overtime Class and the Wage Statement Class satisfy the applicable prerequisites for class action
 9 treatment under Rule 23. First, both classes meet Rule 23(a)’s requirements:

10 • There are “523 total unique Class Members.” ECF No. 51 ¶ 3. The Shift
 11 Differential Overtime Class satisfies the numerosity requirement as it is comprised of 175
 12 individuals. *Id.* The Wage Statement Class similarly satisfies the numerosity requirement as it is
 13 comprised of 499 individuals. *Id.*

14 • There are questions of fact and law common to members of both classes including
 15 “whether Defendant failed to provide accurate itemized wage statements and calculate the regular
 16 rate of pay for purposes of paying overtime.” *Id.* at 20.

17 • Plaintiff’s claims satisfy the typicality requirement for both classes because “he
 18 was not paid overtime based on the correct regular rate of pay due to Defendant not including the
 19 shift differentials in the overtime rate and . . . he did not receive accurate wage statements due the
 20 alleged regular rate and name violations.” *Id.* at 19.

21 • The Court concludes that Manier is an adequate representative and has fairly and
 22 adequately represented and protected the interests of members of both classes. “[N]o conflict
 23 exists between Plaintiff and the Class[es].” *Id.* at 20.

24 The Court also holds that both classes meet the requirements of Rule 23(b)(3). The
 25 common questions of law and fact – including whether “Defendant failed to pay proper overtime
 26 wages by failing to factor in shift differential wages into their regular rate of pay and to provide
 27 employees with accurate itemized wage statements” – predominate over individual questions. *Id.*
 28 at 21. A class action is superior to other methods of adjudication given these common questions

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1 and the number of employees involved.

2 Therefore, the Court provisionally certifies the following classes: (1) “[a]ll of [Sims’s] past
3 and present non-exempt California employees who were paid shift pay and overtime in the same
4 workweek at any time during the Class Period,” and (2) “[a]ll of [Sims’s] past and present
5 California exempt and non-exempt employees who . . . were paid wages by [Sims] from January
6 3, 2018, through the date the Court grants Preliminary Approval.” ECF No. 42-7 §§ 1.3(a)-(b);
7 ECF 46-1 at 3.

8 **CONCLUSION**

9 Because Plaintiff’s renewed motion for preliminary approval and provisional certification
10 corrects the deficiencies addressed in the Court’s prior order, the Court GRANTS the motion.

11 The Court preliminarily approves the Settlement and provisionally certifies the Shift
12 Differential Overtime Class and the Wage Statement Class. The Court appoints Diversity Law
13 Group, P.C., Polaris Law Group LLP, Hyun Legal, APC, and Law Offices of Choi & Associates,
14 as Settlement Class Counsel. The Court also appoints Phoenix Settlement Administrators as
15 settlement administrator.

16 The Court orders the dissemination of the proposed notice to Settlement Class members
17 pursuant to the terms of the Settlement. The Court sets the following dates:

- 18 a. Deadline for dissemination of class notice: October 1, 2021.
- 19 b. Deadline for filing Plaintiffs’ Motion for Attorneys’ Fees and
20 Expenses and Incentive Awards: November 10, 2021.
- 21 c. Deadline for class members to comment upon or Object to the
22 Proposed Settlement and Motion for Fees: December 16, 2021.
- 23 d. Deadline to file Plaintiffs’ Motion for Final Approval of Settlement
24 Agreement, and for the parties to respond to any comments or
25 objections: January 6, 2022.

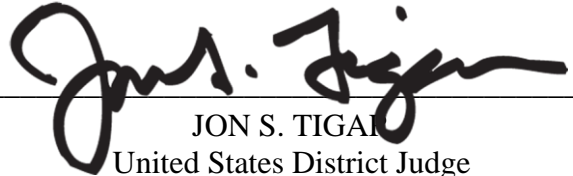
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A final approval hearing will be held on January 27, 2022 at 2:00 p.m.

IT IS SO ORDERED.

Dated: September 2, 2021



JON S. TIGAI
United States District Judge

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